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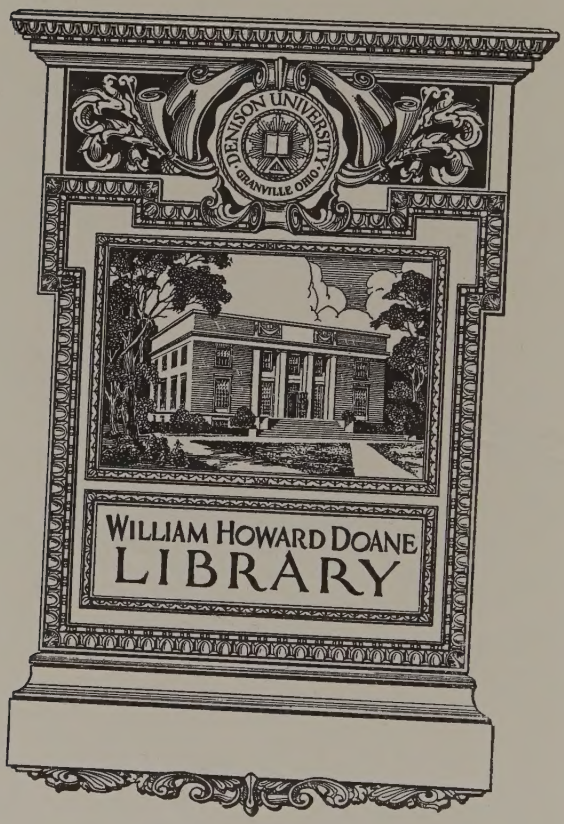

CHINA STUDIES

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TREATY PORTS IN CHINA: A STUDY IN DIPLOMACY

TREATY PORTS IN CHINA

(A STUDY IN DIPLOMACY)

By

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DEDICATED

TO

THE MEMORY OF

MY PARENTS

WHOSE PARENTAL GUIDANCE AND

CARE IN EARLY YEARS

NO TRIBUTE OF MINE

CAN EVER REPAY

Preface

THERE are four different kinds of commercial ports in China, which are now opened to foreign trade. In this monograph the writer has only dealt with the subject of the 'treaty ports'. Although I am not going to touch upon the other three kinds of commercial ports —'Ports voluntarily opened by China', 'Ports in the Leased Territory', and 'Ports of Call'—in this dissertation, nevertheless, it is advisable to point out the nature of these different kinds of ports in the preface.

In the 'treaty port' the rights therein conferred upon the foreign powers are to be found in the treaties and agreements between China and the foreign powers. In these ports subjects of treaty powers are entitled to carry on their mercantile pursuits "without molestation and restraint." The boundaries and the foreign jurisdiction in these ports are also defined by the diplomatic documents.

However, in recent years China has of her own will and initiative opened a number of places to commerce, under conditions which are quite different from those establishing the 'treaty ports'. The boundaries of a voluntarily opened port are defined by imperial decree, and within them both Chinese and foreign merchants are allowed to lease ground without distinction. But, "the control of all affairs therein," as is provided in the regulations for the port of Chinan Fu, a voluntarily opened port, "shall pertain entirely to China; foreigners must not interfere."

Now in regard to the ports in the leased territory, they are leased for terms of years, *e.g.*, Kiaochow for a term of ninety-nine years. "The precise position of foreign merchandise in such leased ports," said Dr. V. K. Wellington Koo, "depends primarily upon the nature of the relationship in which the territory encompassed within the ports stands with the sovereign of China." (*The Status of Aliens in China*, p. 252.) This leased territory is more for the purpose of naval strategy than for commercial purpose, consequently, its nature is quite different from that of the 'treaty ports', the existence of which is solely for trade and commerce.

Finally, we come to the 'ports of call.' "Foreign vessels," said Dr. Koo (*The Status of Aliens in China*, pp. 264–265), "are also permitted to carry on a limited traffic at certain localities along the great rivers designated as ports of call. Six places on the Yangtze River have been opened as such ports under the Chefoo agreement of September 13, 1876, subject to certain regulations therein outlined and four on West River under the agreement with Great Britain of February 4, 1897, under the same regulations as those on the Yangtze River; while the treaty of Shimonoseki, April 17, 1895, provides that steam navigation for vessels under the Japanese flag for the conveyance of passengers and cargo shall be extended to the places on the Yangtze River from Ichang to Chungking and on the Woosung River and the Canal from Shanghai to Soochow and Hangchow, subject to the rules and regulations in force governing the navigation of the inland waters of China by foreign vessels." In regard to the status of these 'ports of call', it is provided in the Chefoo Agreement of September 13, 1876 (Section III, Article I), that "these being all places of trade in the interior, at which, as they are not open ports, foreign merchants are not legally authorized to land or ship goods; steamers shall be allowed to touch for the purpose of landing or shipping passengers or goods." Further, it provides in the same Article that "foreign merchants will not be authorized to reside or open houses of business or warehouses at the places enumerated as 'ports of call'." (*British and Foreign State Papers*, vol. lxxi, p. 933.)

I cannot conclude my prefatory observations without expressing my profound gratitude to my esteemed teacher, Professor John Bassett Moore, for his painstaking supervision of my work, for his stimulating interest in it, for his ever-ready encouragement of sound scholarship, and above all, for his great sacrifice of time in going over the entire manuscript.

En-Sai Tai

New York City
December, 1917

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Chapter I

The Conditions Prior to the Opening of the Treaty Ports

§ 1. *The Treatment of Aliens prior to the 'Closed-Door' Policy.*

Prior to the adoption of the 'Closed-Door' policy in her dealing with aliens, China extended her encouragement to foreign commerce in all parts of her territory. There was no policy of seclusion and confinement, as her doors were kept widely open to welcome whoever chose to enter. There was no law in restricting the movement of foreigners within her dominion, and the aliens who were touring in the country hardly met any official interference. Foreign commerce increased so rapidly that even in 990 B. C., it was thought worth while to levy a duty on imported goods. "During the Tang dynasty (A. D. 618–907) a regular market was opened at Canton and an officer was sent thither to collect the government dues on sales."[1]

§ 2. *The Reaction in China's Foreign Policy.*

However, by the beginning of the sixteenth century China's foreign policy towards aliens within her territory began to have a reaction. From that time down to the middle of the last century, the Chinese Government pursued a restrictive and more or less exclusive policy in its dealings with the foreign merchants and missionaries.

The adoption of this 'closed-door' policy was due, in the first place, to the reports of the conquest of the East Indies and the Malay Archipelago by Portuguese adventurers at the opening of the 16th century, as an immediate outcome of the discovery by Vasco da Gama of the maritime route to Asia by the way of the Cape of Good Hope. The report from the Sultan of Malacca that the Portuguese had by force of arms seized his territory in 1511, and the aggressive acts of the Spaniards in the Philippines in 1543 further increased the alarm of the Chinese Government.

In the second place, we must remember that towards the close of the 16th and the first part of the 17th century the internal

[1] R. K. Douglas, *Europe and the Far East*, p. 2.

affairs of China were such as to require a change of her policy towards aliens. The ruling house, the Ming dynasty, was then struggling between life and death. The rebellions within China Proper and the Manchu invasion from the north quaked the foundation of the ruling dynasty; in other words, the ruling family was then in a hopeless state of defense against its destroyers. Thus it was but natural that the rulers resorted to schemes for preventing aliens from taking advantage of China's weakness to occupy and conquer her dominions.

In addition to these two arguments there was another one, *viz.*, the necessity for the changed attitude. The atrocious conduct of the Portuguese and others appeared to be a just cause for taking precautions. As early as 1506 the foreign traders began to be unscrupulous and to resort to lawlessness in order to gain admission into China. A Chinese work[2] records:

> During the reign of Chingtih (1506), foreigners from the West, called Fah-lan-ki (or Franks), who said they had tribute, abruptly entered the Bogue, and by their tremendously loud guns, shook the place far and near. This was reported at court, and an order returned to drive them away immediately, and stop the trade.

Shortly after this event, Simon Andrada in 1518 seized the island of Shong-Chuan and began to commit acts of piracy but was finally crushed by the Chinese naval force.[3] Later, in 1537, the Portuguese again took possession of several islands in the neighborhood of Canton. "Macao was commenced under the pretext of erecting sheds for drying goods introduced under the appellation of tribute, and alleged to have been damaged in a storm."[4] At Ningpo and Chinchow they refused to submit to the native authorities, and outraged every law and set the feelings of the people at defiance, and as a consequence, they suffered according to nature's retribution.[5]

The Portuguese were not, however, the only disturbers of peace and order in the Chinese territory. The Dutch in commencing their intercourse with China forcibly occupied the Pescadores, but were compelled to retire when they saw that they could hardly stand

[2] Quoted by Williams in *The Middle Kingdom*, vol. 2, p. 432.
[3] Davis, *China*, vol. 1, p. 30.
[4] Williams, *A History of China*, p. 76.
[5] Douglas, *Europe and the Far East*, p. 11.

against the Chinese troops who were sent to dislodge them. Then they seized Formosa, but in the war of 1662 the Chinese drove them out of the island. The Englishmen were even ruder in making their début on Chinese territory. In 1637 Captain Weddel, commander of a fleet of five British East India Company's ships, sailed up to Canton and arrived in the neighborhood of the forts. In writing about this event one author[6] said:

> The authorities at Canton were about to negotiate with the English Captain as to the conferring of commercial privilege on his compatriots when their minds succumbed to the evil influences of the Portuguese, who "so beslandered them (the English) to the Chinese, reporting them to be rogues, thieves, beggars, and what not, that they became very jealous of the real meaning of the English." Accordingly, the Bogue forts fired upon one of the barges in search of a water-boat, in order to compel the departure of the English vessels.

In reply to this, the Englishmen displayed their bloody ensigns and attacked the forts, and the Chinese garrison was forced to retreat. Thus, the Englishmen took possession of the forts, and soon after this, the Canton authorities sued for peace. After this event, there was no further trade between China and England at Canton until 1684. Although several attempts were made by the English to establish foreign trade at Amoy, Chusan and Ningpo, nevertheless, there was little profit on account of the heavy tolls levied by the local officials for this privilege.

§ 3. *Organization to Conduct Foreign Trade.*

The foreign merchants tried to evade the oppression of the Canton officials by seeking an entrance at Amoy, Ningpo, and Chusan, but in this attempt they failed, as the local authorities in these places made even heavier exactions. Consequently, they were forced to return to Canton, and by an imperial decree of 1757 all the other ports of the empire were closed to foreign commerce. From that year until 1842 Canton was the only port for foreign trade and intercourse. In 1720 there was established a union of Chinese merchants to regulate the prices in tea and silk for their private interest.[7] This organization, the Cohong, was given, by a charter in 1760, the monopoly of the trade, but on account of its insolvency it was dis-

[6] Koo, *Status of Aliens in China*, pp. 25–26.

[7] Morse, *The International Relations of the Chinese Empire*, p. 65.

solved by order of the Government in 1771. Following this dissolution, another monopolistic organization was created to continue under the old name of Cohong. This body,[8] at first composed of twelve and later thirteen Chinese merchants, like its predecessor, was given an exclusive right to trade with the aliens. In consideration of this valuable privilege the Cohong had to perform political, diplomatic, fiscal and commercial duties. It was responsible for the good behavior of all the foreign population and the customs dues on the whole trade. It was bound to transmit correspondence between the Chinese and foreign officials, and it must see that the foreigners are obeying the orders and decrees of the authorities. The only means which it possessed of securing the enforcement and observance by the aliens of the orders and decrees, was the threat of stopping the trade completely, which usually proved to be an efficient weapon.[9]

However, on the side of the foreign merchants there was no such monopolistic organization as the Cohong. These foreign traders represented twelve nationalities and carried on their trade independent of one another not only as between the merchants of different nations but, with one or two exceptions, as between those of the same nation. The exceptions were the British and Dutch East India Companies. The former, by reason of its wealth, power and organization, was a more powerful factor in the history of the foreign trade at Canton. By its charter, it was granted by the Parliament a monopoly of the trade between China and Great Britain, and it exercised an effective authority over all British subjects trading in China as it had the power to grant and revoke licenses.[10] By reason of these advantages, the Company enjoyed with the local authorities a prestige and influence which no other body of foreign merchants shared. The officials negotiated with them about matters of regulation not only of trade but also of the traders. The privileges that the Company secured for British merchants were also enjoyed by all other foreign traders without a separate grant from the local authorities. On account of this, the western merchants looked for protection, not to their own consuls,

[8] *Ibid.*, pp. 67–68.

[9] Sargent, *Anglo-Chinese Commerce and Diplomacy*, pp. 15–17.

[10] *Ibid.*, p. 17 n.; citing 26 Geo. III., cap. 57; 33 Geo. III., cap. 52; 53 Geo. III., cap. 155.

who were, after the fashion of the time, themselves merchants, and who "not being credited by the Chinese Government, came and went, hoisted or lowered their flags, without the slightest notice from the authorities,"[11] but to the Company, which was always ready to be the champion not only of British interests but also of all foreign interests.[12]

§ 4. *Jurisdiction over Aliens.*

On account of the increase of the foreign population in China during the first half of the 19th century, the problem of legal control over aliens became greater every year. At Canton the number increased from 165 in 1832 to 307 in 1836.[13] In 1830 the number at Macao was 3,351 white persons and 1,129 slaves.[14] The nationalities represented in the above figures were British, Indians, Parsees Americans, Portuguese, Germans, Dutch, Swedes, Danes, French, Spaniards and Italians.[15] These aliens lived together in a community of their own but they had no common organization for their own administration. The consuls appointed by the various governments were merely merchants, neither accredited to the Chinese Government nor recognized by it as official agents of their nations. Consequently, the legal control of aliens was left to the Chinese authorities.

The Chinese notion of territorial sovereignty and jurisdiction, as entertained, though at times vaguely, by the local authorities in those days, was not essentially different from that which the modern international jurists maintain. It was claimed that within the territory the Chinese laws were supreme, and that foreigners were subject to the same obligation and penalties as the natives.[16] During this period regulations were made and adopted from time to time for observance by the traders and other aliens. For instance, they were required to return from Canton to Macao or their home when the trading season was over; they were prohibited from bringing women, guns, spears, or other arms to the factories; they were not allowed to row for pleasure on the river.[17] The penalty for the vio-

[11] Williams, *A History of China*, p. 102.
[12] Sargent, *Anglo-Chinese Commerce and Diplomacy*, p. 20.
[13] Morse, *International Relations*, p. 72.
[14] *Ibid.*, p. 46.
[15] 25 *British and Foreign State Papers*, p. 397.
[16] Sargent, *Anglo-Chinese Commerce and Diplomacy*, pp. 75–76.
[17] Morse, *International Relations*, pp. 69–71.

lation of these regulations was the deportation of the offenders or the stoppage of trade for the whole community.

The question of jurisdiction in civil suits between aliens and Chinese was unimportant and in fact did not arise during this period, as differences were easily and quietly settled by direct negotiation between the parties themselves. In the words of a competent authority:[18]

> Civil suits gave China no trouble. Those between foreigners and Chinese were readily settled, since the power of dictating terms was always in the hands of the Chinese merchant, with whom alone could be transacted any business which might give rise to a suit—except only the loans of money to Chinese which occasioned difficulty from time to time. Business disputes between foreigners were never brought to the knowledge of the Chinese, and this was quite in accord with the Chinese practice of settling civil suits through the gild, or by arbitration—never by appealing in the courts.

The question of jurisdiction in criminal cases gave rise to a good deal of friction between the Chinese authorities and aliens. The Chinese authorities claimed that crimes committed on their territory should be punished according to Chinese laws. However, writers and commentators, both of that period and of later date, stated that the administration of criminal justice as regards Europeans should be given up by China on the ground that her methods of punishment were barbarous and cruel. In criticising this statement I may quote the following:[19]

> We, in the twentieth century, must be careful not to measure the doings of former times by the standards and conventions of today, as we hope that our doings may be gauged by our standards, and not by those of the future. In the cases cited, the official chronicler of the East India Company declares that "the Chinese have no desire to screen their countrymen from punishment when guilty, but the inquiry must be carried on according to their own forms and usages;" and this proviso is true, not only in case of charges against Chinese, but as well when Chinese brought plaint against the foreign sailors.

Although American criminal laws were milder than those of the East or the West, yet in going to China the Americans adopted the position embodied in the declaration made on the occasion of the Terranova trial—"We are bound to submit to your laws while we are in your waters, be they ever so unjust, we will not resist

[18] *Ibid.*, p. 96.
[19] *Ibid.*, p. 109.

them."[20] This policy was pursued consistently until 1844 when Caleb Cushing concluded the treaty of 1844 by which extraterritorial rights were secured.

At first it seemed as if the English were willing to submit to the Chinese law, but "experience drove them to debate as to what the law was, and how it was administered." So it is necessary for us to have a brief comparison of the Chinese and English criminal law of the time to see how much differences there were.

The Chinese law has been briefly summarized by a competent writer as follows:[21]

1°. Wilful and premeditated murder is punishable by beheading.

2°. For homicide during an affray, though without any express desire to kill, or killing another on suspicion of theft, or being accessory to a murder, the penalty is strangulation.

3°. Persons who kill or wound another purely by accident (in such way that no sufficient previous warning could have been given) may redeem themselves from punishment by payment of a fine to the family of the person killed or wounded.

4°. Killing in lawful self-defense is justifiable and not punishable.

At the same period, the English law inflicted the death penalty for the stealing of sheep and horses, the stealing of money exceeding twelve pence, and other similar offenses. An attempt to kill, even without wounding, was punished as a capital felony, and it was not until 1861 that attempts to murder resulting in bodily injury, were taken away from the list of capital crimes.[22] Thus the two laws were about the same as far as the standard of punishment was concerned.

To the Chinese law the English finally refused to submit, and the various causes of ill-feeling and friction went on increasing until an igniting point was reached, when open war between China and Great Britain broke out, through which the disputes were finally settled by the treaty of Nanking of August 29, 1842.

[20] Williams, *Middle Kingdom*, vol. 2, p. 460, citing *North American Review*, January, 1835.

[21] Morse, *International Relations*, p. 110.

[22] J. F. Stephen, *History of the Criminal Law of England*, vol. 3, pp. 114–116.

Chapter II

The First Five Treaty Ports (1842–1858)

§ 1. *The Early Treaties.*

By the treaty of Nanking of August 29, 1842, China opened five ports to foreign trade. By Article 2 "British subjects, with their families and establishments, were allowed to reside, for the purpose of carrying on their mercantile pursuits, without molestation or restraint, at the cities of Canton, Amoy, Foochow, Ningpo, and Shanghai." By the second part of the same article, the British Government was authorized to appoint Superintendents or Consular Officers to reside at each of those ports to serve as the medium of communication between the Chinese authorities and the merchants, and "to see that the just duties and other dues of the Chinese Government," as thereinafter provided for, are "duly discharged by Her Britannic Majesty's subjects." By Article 5 it was provided that the Chinese Government should abolish the monopolistic privileges of the Hong merchants (or Co-Hong) at all ports where British merchants might reside, and should permit the latter to carry on their mercantile transactions with whatever persons they pleased. Further, the Chinese Government stipulated to pay to the British Government the sum of $3,000,000, "on account of debts due to British subjects by some of the Hong merchants or Co-Hong," who had become insolvent, and who owed very large sums of money to British subjects. By Article 10 China agreed to establish at all the five ports a "fair and regular tariff of export and import customs and other dues," which tariff was to be "publicly notified and promulgated for general information." [1]

The second part of Article 2 of this treaty was very significant, as it imposed on the consuls a duty which was formerly imposed on the Co-Hong by the Chinese Government. As this monopolistic association was abolished, it was agreed that the British Consuls should see to it that the duties due to the Chinese authorities were paid by British subjects, and that the Consul should "be security

[1] 30 *British and Foreign State Papers*, p. 398 *et seq.*

for all British merchant ships entering any of the five ports." This provision the British Consuls carried out with a great sense of justice and a desire to help China, and as the other powers did not have such a provision in their treaties, the prestige of the British Consuls stood very high, and proved to be a deciding factor in leading to the establishment of the foreign inspectors of customs.

A supplementary treaty was signed at the Bogue on October 8, 1843, by Sir H. Pottinger, the British plenipotentiary, and Kiying, the Chinese Commissioner. It provided for a new tariff at the five treaty ports, and for the general regulations of trade in those ports.[2] It further provided that British merchants should be allowed to trade only at the five ports above mentioned.[3] It also provides for the extradition of criminals and offenders against the law.[4]

On the arrival of Caleb Cushing from the United States on February 24, 1844, an announcement was made to the Canton authorities of the general objects of his mission and of his orders to proceed to Peking. This information having been despatched to the capital, the Emperor with all haste appointed Kiying to negotiate a treaty with him at Canton. With as little delay as possible the plenipotentiaries met, and without much controversy agreed to and signed a treaty on July 3, 1844, at Wanghia. This treaty gave the Americans the same rights to reside and trade at the same five ports which were specified in the British treaty.[5] But in this treaty nothing was said about the responsibility of the Consul in regard to the payment of the duties.[6]

Monsieur de Lagrenée arrived from France in the following August; and again Kiying was nominated to represent the Chinese Emperor in the negotiations with him. No difficulties were raised on either side, and on October 23, 1844, the treaty of Whampoa was duly signed and sealed. The absence of the admixture of any trading disputes in the discussion of the treaty added to the ease with which it was concluded. But while the French plenipotentiary made light of trading privileges, he also advocated the cause of Christianity. Happily, at this juncture, a liberal view with regard

[2] Article 1.
[3] Article 2.
[4] Article 9.
[5] Article 3.
[6] *Chinese Repository*, July-December, 1844, August, 1845; Foster, J. W., *American Diplomacy in the Orient*, p. 82 *et seq.*

to religious matters prevailed at Peking, and in response to his representations an Imperial edict was proclaimed ordaining the toleration of the Christian religion, as being one which inculcated the principles of virtue. In providing for the rights of Frenchmen to trade and reside in the same five ports, this treaty is almost the same as the American treaty. But its religious provision is not to be found in the British and American treaties.[7]

§ 2. *The Treaty Port of Shanghai.*

When the treaty of Nanking was signed in 1842, Shanghai was included among the Four Ports in addition to Canton, and it was opened to foreign trade by a notification of Captain G. Butler, British Consul, of November 17, 1843. The question of "entry to the city," which became so vital at Canton, did not come up at Shanghai, where the Consul, merchants, and missionaries all rented houses inside the city walls. However, the British Consul soon obtained land outside the walls for a settlement, and by the agreement of November 29, 1845, between the British Consul and the Taotai the boundaries of this settlement were defined to be, on the north the Soochow Creek, on the south the Yangkingpang, and on the east the harbor (the Hwangpu River). Nothing was said about the western boundary, but by the agreement of September 24, 1846, it was fixed at the 'Barrier Road' (the present Honan Road), while by the agreement of November 27, 1848, it was extended to the Defence Creek.[8] Within this area the British authorities did not claim exclusive privileges for their subjects, and this 'British Settlement' was from the beginning open to all.

By an agreement of April 6, 1849, the French Consul and the Taotai defined the boundaries of the French settlement to be the north side of the city on the south; the Yangkingpang, a creek separating it from the British settlement, on the north; the Hwangpu River on the east; and the line of the temple of the God of War and the bridge of the Chow family on the west. However, by acts of usurpation during the defense of Shanghai against Taiping Rebellion, "this area was extended to the south by the inclusion of the suburbs between the city wall and the river as far as the Little East Gate, and to the west as far as the line of the Defence

[7] 34 *British and Foreign State Papers*, 1298 *et seq.*; Williams, S. W., *Middle Kingdom*, vol. 2, p. 357 *et seq.*

[8] *North-China Herald*, January 17 and February 28, 1852.

Creek."[9] This settlement has been known as 'concession française'. By the same agreement it was provided that "should persons of other nations wish to acquire land and build within the above limits, they must first apply to the French Consul, who will take the matter into consideration and act on their behalf."[10] This kind of provision was also written down in the agreement of the British settlement, by which the subjects or citizens of any nationality must first apply to the British Consul; but in practice this rule has never been observed. When the agreement relating to the French settlement was published, the American and British Consuls protested against the requirement that their nationals should apply before the French Consul, and they informed their nationals that their protection would be extended to their land wherever situated.

"The American settlement was not created, but 'just growed'." The American merchants remained in the British settlement, but the Hongkew side across the Soochow Creek was more suitable for the purposes of repairing their merchant vessels. The Missions maintained chapels in the Chinese city, but for residential comfort they preferred Hongkew. When the first official Consul of the United States arrived at Shanghai in 1854 he hoisted his flag and established his residence on the American settlement, but this part of Shanghai remained without organization or police force until the refugees were fleeing into the settlement during the Taiping Rebellion. Furthermore, its boundaries were left undefined until it was incorporated with the British settlement to form the International settlement.

The first land regulation for Shanghai was drawn up and put into force in 1845 by the British, American, and French Consuls. It (Article 1) provided that on merchants renting ground, the local officers and the Consul must, in communication with each other, define its boundaries, clearly specify the number of poo and mow, and put up stone landmarks; and that where there were roads, or paths, these landmarks must be placed against the fence, so as not to occasion obstruction to passengers, that the Chinese were required to report the transaction at the offices of the Intendant of Circuit, and of the Magistrate and Haifang of Shanghai, in order that they might address their high officers thereupon, while the

[9] Morse, *International Relations*, p. 348.
[10] *Chinese Repository*, June, 1849.

merchants were to report to the Consul, so that the transaction might be put on record; and that the deed of the lessor renting out the land, and that of the lessee acknowledging the rent, were to be executed in the form of an indenture, and to be examined and sealed, after which the possession of the land was to be given to the proper parties. These precautions were taken in order to assure good faith and to prevent encroachment and usurpation. The regulation (Article 2) provided for the permanence of the large road along the bank of the river, which was a towing-path for the grain junks, and which had now become the far-famed 'Bund' of Shanghai, and (Article 3) laid down the direction of sundry main roads and the terms on which new roads should be constructed. It further fixed (Articles 7 and 8) the annual Government rental on all lands held by foreigners at fifteen hundred cash per mow, and (Article 12) recognized the duty of the foreign renters to "build and repair the stone and wooden bridges, keep in order and cleanse the streets and road, put up and light street lamps, establish fire-engines, plant trees to protect the roads, open ditches to drain off the water, and hire watchman." [11]

Such were the rules under which the rising emporium was originally constituted, and which were so harmoniously and efficiently carried out as to obtain for Shanghai the distinctive title of the 'Model Settlement'. As time went on, however, the sites which had been set apart for the residence of French and American citizens began to be gradually occupied, and the confusion which was superinduced by the occupation of the Chinese city by the forces of the Taiping rebels rendered an extension of systematic rules to the whole territory inhabited by foreigners absolutely indispensable. The three foreign Consuls, Messrs. Rutherford Alcock (British), Robert C. Murphy (United States), and B. Edan (French), united on July 5, 1854, in notifying the foreign community that a new code of Municipal and Land Regulations had been devised, in concert with the Taotai of Shanghai. This significant document, forming the constitution under which foreigners at Shanghai were henceforth to be governed in municipal matters was submitted to a public meeting of Land Renters on the 11th of the same month. The character of these regulations, devised for the purpose of administering the self-government of a large community of foreigners of

[11] Land Regulation, 1845, see *North-China Herald*, January 17, 1852.

diver nationalities who without such an expedient, could be controlled only by the separate action of their national representatives, has so important a bearing on the subsequent history of Shanghai that an outline must be given in this section. In the first place (Article 1) the boundaries of the Settlements were defined. In providing for the mode of acquiring land (Articles 2, 3 and 4), the lessee or purchaser must first apply to the consul or consular-agent of his nation, or if there be none appointed, to the consul of any friendly power, and the said consul or consular-agent was thereupon to enquire whether there was any impediment by reason of previous negotiation or application by third parties or otherwise. Then it (Article 7) provided that an assessed annual rent or land tax should be paid to the Chinese Government on all land rented by foreigners within the said limits at the rate of fifteen hundred cash per mow. Further, provisions (Article 10) were made for roads, jetties, assessment on land and wharfage. It (Article 13) also provided that when any consul had discovered a breach of the regulations or should the local authorities address him thereon, he should in every case within his jurisdiction summon the offender before him, and if convicted punish him summarily in such manners as might seem just; and that should any foreigner, who had no consular authority at Shanghai, commit a breach of the said regulations, then, and in such case, the Chinese chief authority might be appealed to, by any one or more of the Foreign Consuls, to uphold the regulations in their integrity, and punish the party so infringing them. Finally (Article 14), it provided that in case of any necessary modification of these regulations or should it be necessary to determine on further rules, or should doubts arise as to the construction of, or powers conferred thereby, the same should be settled by the Foreign Consuls in cooperation with the Intendant of Circuit, and they must submit the same to the Chinese Imperial Commissioner managing the affairs at the five ports for approval.[12]

The public meeting of July 11, 1854, at which the foregoing Regulations were formally propounded and accepted by the body of foreign land-renters, became a sort of Constituent Assembly, at which the future form of government was decided upon. It was determined by the votes of the meeting that "Residents be annually chosen by the votes of a public meeting, to be held in the month of

[12] *North-China Herald*, July 8, 1854.

March, to administer the affairs of the community, to be called the Municipal Council, and that it consists of a chairman and six members."

In this period the expectation and intention of all was that the entire body of foreign residents in Shanghai would combine to form a single body politic without regard to the theory of administration based on nationality. But international jealousies proved too strong for considerations of the general good, and as residents of many nationalities began gradually to settle within the French and American settlements, the Consuls of these nations supported the theory of separate administration for each settlement. The consequence of this independent action was that while the British settlement, which comprised almost all of the wealth, population and trade, was comparatively well laid out, drained, and guarded, the settlements on either side remained for years in a condition of primitive wildness and insecurity. It was not until the events of later years brought a large Chinese population within the elastic limits of the French settlement that its Municipal Council was placed in possession of funds enabling it to carry out works of draining and road-making such as had long been in progress within the British limits, nor was it until 1863 that the American settlement was formally incorporated with the British for all municipal purposes.

By Article 15 of the Shanghai Land Regulations of 1845 "native inhabitants" were prohibited from selling or renting land or houses to other Chinese, and by Article 16 foreigners were prohibited from "building houses for renting to, or for the use of Chinese." But these prohibited articles were omitted in the Land Regulations of 1854, and, "in fact, their enforcement was no longer within the power either of governments or of individuals." When the Taiping Rebellion extended to the vicinity of Shanghai the population of the neighborhood fled to the settlements for refuge, as they were declared to be neutral ground. So on February 24, 1855, the Taotai and the foreign consuls agreed that: "Whereas, no Chinese can acquire land, or rent, or erect buildings within the foreign settlement, without having first obtained an authority under official seal from the local authority, sanctioned by the consuls of the Three Treaty Powers, it has been decided that the following course shall be observed by any Chinese desiring to rent ground or houses within the said limits: Chinese subject is to apply through the lessor to the les-

sor's consul, and he must also provide two wealthy householders as sureties and also stipulate that he will conform strictly to the land regulations, and contribute his share to any general assessments." [13]

Regulations were made in 1847 to guard against accident or collision of vessels, and to give security to vessels loading and discharging goods at Shanghai. These regulations of April 4, 1847 were agreed upon by the British Consul and the Intendant of Circuit for the anchorage for British vessels extending from Soochow Creek to the Yangkingpang. Article 1 provided for a passage on the east side of the river in order to afford free communication for vessels of all nations, consequently, this article limited the boundary where British vessels might anchor. Article 2 secured a free passage to the custom-house for cargo boats, and along the west shore for the towing of the grain junks. Article 3 required vessels to be moored within the period of two tides from the time of their arrival at the anchorage, and after mooring no vessel could move or shift her berth without permission from the British Consul. Article 4 provided that when there were more than fifteen vessels anchoring there, each vessel must be moored head and stern with two anchors, in order to prevent collision in swinging and to provide space for an increased number of vessels. Article 5 provided that the masters before beaching their vessels for repair or inspection must secure the instruction of the British Consulate. Article 6 regulating the landing, shipping, or trans-shipping of goods. Article 7 prohibited the discharge of firearms from merchant vessels in the anchorage. Article 8 required the report of all cases of death on board a vessel in the anchorage at the British Consulate together with the best information attainable as to the cause of death in cases of sudden demise. Article 9 placed the responsibility for the conduct of the crew on shore on the masters, and that seamen were not allowed to go on shore without a responsible officer. Article 10 provided that accidents or violence within the limits of the anchorage, involving personal injury, loss of life, or property, from the collision of vessels or other causes, must be reported at the British Consulate as soon as practicable, and in cases of theft or assault in which any individuals belonging to the ship in the anchorage and Chinese were both concerned, "a Chinese, if in the wrong, and there be no officer of his country at hand, may be conveyed to the British

[13] *North-China Herald*, March 24, 1855.

Consul, who will proceed to investigate the extent of the offense and accordingly proceed against him." Article 11 secured the same privilege for vessels of all nations to anchor within the limits, but they were subject to the same regulations as British vessels. Article 12 provided for the modification and interpretation of the regulations through settlement by the British and Chinese authorities. Article 13 provided for the punishment of those who had violated these regulations.[14]

Following this another regulation for the Port of Shanghai was passed in September 24, 1851, through the combined action of the foreign consuls and the Intendant of Circuit. It (Article 1) defined the boundaries of the anchorage for foreign vessels to be on the north, a straight line running directly east from the southern bank of the Wusung-kiang (Suchau Creek) at low water mark, into the stream of the Hwangpu River. It also provided that buoys were to be placed at the northern and southern extremities of the anchorage, in order to establish the line of boundary, and it was to be obligatory upon all vessels to anchor within the defined limits, and not on any account to pass so far on to the eastern bank of the river as to obstruct the general navigation; that a free passage moreover was to be maintained along the western bank of the stream to facilitate the passage of cargo boats to and fro, and the examination of goods, and to leave a way for the towing of the grain junks up and down the river. Then it (Article 2) provided that a harbormaster should be appointed, whose duty was to berth all foreign ships arriving at the anchorage of Shanghai, and to superintend their mooring and unmooring and to take them safely out when ready to depart, and his permission must be secured before any vessel could shift its berth and his directions as to mooring of vessels under every flag without distinction were to be strictly followed. Then it (Article 3) provided that no vessel or boat under any foreign flag, and no Chinese junk or boat having a cargo of gunpowder or other combustibles on board, should be permitted to anchor among the foreign vessels or in their near vicinity, ships-of-war of course excepted. Then it (Article 4) provided that "no citizen or subject of any foreign state shall be allowed to open either boarding or eating-house for sailors at the port, without the express authority of the consular representative to whom he may be en-

[14] *Chinese Repository*, vol. 16, pp. 361–363.

titled to apply, nor without good security that such party shall give no harbor to any seaman who is a deserter, or who cannot produce his discharge accompanied by the written sanction of the said consul for his residence on shore. Every boarding or eating-house keeper will further be held responsible for the good conduct of all who come to his house." It also provided that no Chinese subject under any pretense whatever should be permitted to open either grog-shop or boarding-house for foreign sailors to drink, debauch, and gamble in; but that they would not be restricted however from keeping shops for selling provisions and sundries, or any other legitimate articles of merchandise to the natives. Finally it (Article 5) provided that no sailors from a foreign vessel could be discharged or left behind at this port without the express sanction of the consul reporting the vessel, nor until good and sufficient security was to have been given for his maintenance and good behavior while remaining on shore.[15]

During this period aliens at Shanghai enjoyed perfect security in life and freedom in action, and they were given the freedom of movement in the neighborhood of Shanghai with only a limitation that they should be able to return to Shanghai within the same day. Unfortunately, some regrettable incident might happen, as when the Rev. W. M. Lowrie, an American missionary, on the 19th of August, 1847, came to a sudden and violent death by the hands of pirates near Chapu. It was recorded that his boat was pursued by a piratical boat of the class designated by the Chinese the 'broad bow sanpan', after having proceeded some 40 li from Chapu. On the approach of these pirates, Mr. Lowrie waved a small American flag and for this his boat received a volley from the pirates as a reply. When the pirates boarded, searched and plundered the boat, Mr. Lowrie declared that if they robbed him of his effects, he must report them to the officers of the government. The pirates became angry when they heard this, and several of them seized hold of Mr. Lowrie and hurled him overboard. As the waves were running high and he was several miles from land, he quickly perished. After some delay, nine principals of the piratical horde were arrested. Three of them were decapitated with their heads hanging in a cage upon a pole for public view, and the remaining six were sentenced to banishment as slaves to the military officers on the Sinkiang

[15] *Ibid.*, vol. 20, pp. 558–559.

border. The peaceful and friendly manner in which this case was settled through diplomatic correspondence causes it to form a notable contrast with a case soon afterwards occurring where several Englishmen were assaulted in the vicinity of Shanghai.[16]

On the 8th of March, 1848, a party of English missionaries, consisting of Messrs. Medhurst, Lockhart, and Muirhead, went on a journey to Tsing-pu, about 90 li from Shanghai, for the purpose of distributing tracts. Messrs. Muirhead and Lockhart had visited that city several times previously, and it being within the distance that could be reached and the return to Shanghai effected within twenty-four hours, it was considered to be within the limits assigned by the British Consular Regulations. On their arrival at the city, the missionaries proceeded, as was their custom, to distribute tracts which is generally done from house to house among persons who appear to be able to read. While they were thus engaged, a number of Shantung men, who navigate the grain junks, belonging to Tsing-pu, came up behind pushing and striving to get a larger number of the books than would fall to their share, and also throwing stones. Mr. Lockhart looked after the books while the other two missionaries distributed the literature; but in defending the property, he injured one of the men with his walking stick, and upon this the other navigators of the grain junks began to make a noise, and throw stones, threatening further mischief. Mr. Medhurst succeeded in driving them away, by threatening to hand the ringleaders over to the magistrate; but when having distributed the books, the missionaries passed out at the east gate, on their way home, they had not gone half a mile from the city before they heard a number of people hooting after them and threatening to beat them, and before they could say anything, they were attacked and rather severely beaten. They were also plundered of their watches, spectacles, caps and clothes, and were forced to turn back towards the city. The grain junk men, by whom the attack was made, had one by one slunk away, and on entering the city the missionaries, who had been joined by a number of people, were conducted to the magistrate, who manifested the utmost sympathy with them. The magistrate invited them to the visitor's apartment, and asking them to sit down, inquired into the affair. Being informed of the circumstances from beginning to end, he promised that the stolen

[16] *Chinese Repository*, vol. 16, pp. 567, 607–610; and vol. 17, pp. 484–486.

articles should be returned, and that the men who committed the outrage should be punished. Having then provided chairs and boats to carry them back to their own boats, he despatched two military and two civil officers to escort them and to protect them from further harm. In this way they returned to their boat, which was five miles from the city, and finally reached their homes in safety.[17] The British Consul, Mr. Rutherford Alcock demanded prompt redress; but there was some delay which was due not to negligence on the part of the officials but to the fact that they were not dealing with law-abiding inhabitants, but with a band of not less than thirteen thousand grain-junk men, who were about to be deprived of their occupation, and who were too powerful for the Chinese officials to control. Five days having elapsed since the occurrence of the incident, the British Consul, who had no sympathy with the awkward position of the Chinese officials, informed the Taotai that he would stop the payment of duties by British vessels until full satisfaction was secured; and he further proclaimed that no grain junks would be permitted to leave Shanghai. This risky course was adopted with the cordial approval of the whole alien community. Not being able to secure a satisfactory result, the British Consul on the 19th sent the man-of-war *Espiégle*, with Vice-consul Robertson and Interpreter Parkes on board, to Nanking. There they took up the matter with the Viceroy, who promptly despatched I, the acting commissioner of justice, and Wu, the intendant in waiting, to hold an assize at Tsingpu. The Shanghai Taotai was made a scapegoat and removed from office. As a result of the investigation, ten criminals were brought to Shanghai for trial. These ten offenders, in the presence of the British Consul, the injured parties, all the local authorities, and a large number of assistants, were put in the cangue on the spot, to which punishment they were sentenced for a month, and they were exposed during that period in the public thoroughfare as a warning to the public.[18]

Being satisfied with the redress, the British Consul removed the embargo on the grain junks and ordered that all the duties should be paid as heretofore, and with this notification the trouble was brought to an end.

[17] *Ibid.*, vol. 17, pp. 151–156.
[18] *Ibid.*, vol. 17, pp. 310–311, 319–320, 403–406, 409–411.

The action of the alien representative in this case was really too rash and unreasonable, and if the Nanking authorities were as hot-headed, it might have involved the two nations in one more bloody war. A competent authority [19] said:

> Mr. Bonham, within the week in which he entered on the duties of his post of governor of Hongkong, reported that he "conceived Mr. Alcock had exceeded the just limits of his authority;" and he wrote to Mr. Alcock: "I feel more strongly than ever the necessity of discouraging any offensive operations, which may embroil the two nations in hostilities, without the previous sanction of H. M. government." Lord Palmerston approved of "the decision taken and the course pursued by Mr. Alcock," but added that, though the government approved, "yet this case must be considered as an exception to a rule, and not as a precedent for future guidance."

Following this incident, the British Consul issued a notification regarding the prescribed limits in Shanghai which aliens were allowed to penetrate into the country. In the note he said that among the foreigners there were certain British subjects who made excursions in direct violation of Article 6 of the Supplementary Treaty of October 8, 1843,[20] and that such proceedings could only tend to place the British Government in a false position with the Chinese authorities. He exhorted them to set the example of scrupulous respect for the Treaties under which they claimed advantages often repugnant to the Chinese. Further, he said that whatever might be the advantages anticipated from a freer access into the interior, they were not to be won by acts proving to both governments that British subjects were not to be restrained by any regard to the obligations of Treaties, or the authority of their own Sovereign. In conclusion he said: "H. M.'s Consul would appeal to the good sense and good feeling of the British community generally to prevent the recurrence of acts so mischievous in their tendency and objectionable in every sense. But it is his duty also publicly to notify all British subjects that he will take the most effective means to exonerate H. M.'s government from all suspicion of tacitly sanctioning or conniving at similar violations of the provisions of the Treaty, and spare no exertion to ensure the conviction of any parties who may be found wilfully offending." [21]

[19] Morse, *International Relations*, pp. 393–394.
[20] 31 *British and Foreign State Papers*, p. 132.
[21] *Chinese Repository*, vol. 17, pp. 317–318.

§ 3. *The Treaty Port of Ningpo.*

The opening of Ningpo as a treaty port was based on its past history as a trading station for the Portuguese and the English. The first notice of Portuguese trade at Ningpo occurs about 1522, that is, a few years after the expulsion of the Portuguese from the coasts of Kwang-tung, in consequence of the atrocious conduct of which they had there shown themselves guilty. Permission appears to have been tacitly given by the Chinese local authorities for an establishment at the mouth of the Yung, to which the name of Liampo (Ningpo) was given by the Portuguese. Here the commerce was very prosperous, and it might have developed into a central commercial port, had not the unbridled rapaciousness of the Portuguese again brought vengeance, and destruction upon a rising colony. It is related that one Lancerote Pereira, a man in official authority, distinguished himself by acts of lawless plunder perpetrated upon the surrounding villages, whence he and his associates carried off not only the property, but also the wives and daughters of the inhabitants. In 1542, when complaints were made to the governor of the province, he ordered that the settlement should be destroyed and its population exterminated, and this command was forthwith obeyed. The community consisted at this period of three thousand male adults, besides women and children, and of these 1,200 Portuguese. When this order was carried out 800 of the Portuguese were massacred, and twenty-five Portuguese ships and forty-two junks were destroyed.

The next attempt at commercial relations with this part of China was made by the East India Company towards the end of the Seventeenth Century. Chusan, lying opposite the river Yung and at a distance of about forty miles from Ningpo, was the nearest point at which the foreign merchants were permitted to reside. The East India Company's factory at Chusan was not, however, continued later than 1703, the trial being found unsatisfactory, and for upwards of a century and a quarter after this date Ningpo was visited only by two or three foreign vessels, dispatched at long intervals on experimental cruises. The last of these voyages was performed by the *Lord Amherst*, fitted out at the expense of the East India Company and conducted up the coast in 1832 from Canton by Mr. Lindsay and the Rev. C. Gutzlaff. The local

authorities of Ningpo had, however, a determined refusal to all proposals for the establishment of trade.

When next the waters of the Yung were disturbed by foreign keels, it was under very different circumstances to those attending the peaceful voyage of the *Lord Amherst*. The hostilities which broke out between Great Britain and China in 1839 at Canton were spread northward to Nanking. Ningpo was captured and occupied by a British garrison on October 13, 1841, without meeting any resistance from the Chinese troops there. Valuable booty was obtained from the public treasuries, but private property was respected. This military occupation lasted until May 7, 1842, when the entire expedition began to move northwards for the capture of Chapu, Wusung, and Chinkiang.

Peace having been proclaimed in August, 1842, and Ningpo included in the list of ports henceforward open to trade, the city became accessible to European residents, of whom the pioneer was the Rev. W. C. Milne. This zealous missionary, who had been for some time a resident of Chusan, removed to Ningpo in December 1842, and was for many months the only foreigner in or near the city. In December 1843, Mr. Robert Thom was despatched to Ningpo as the first British Consul, and the location for foreign residences was placed on the north bank of the river, opposite to the city. Foreign trade was less rapid in its development than had been anticipated at the outset, the proximity of Shanghai having an unfavorable influence on the direction of both exports and imports, but a considerable settlement was nevertheless formed here in the course of a few years. In 1857 attention was attracted to the port through a repetition of the massacre of Portuguese, whose acts, after a lapse of three centuries, had again drawn down upon themselves the vengeance of the injured natives. For several years previously, 'lorchas' or Chinese junks rigged in European fashion, and manned principally by half-castes from Macao, had been protected by the Portuguese flag in the commission of numerous piratical outrages, whilst the appeals of the local authorities to the individual acting as Portuguese Consul remained unheeded. The ostensible occupation of these vessels was the 'convoying' of Chinese junks as a protection against pirates, in which capacity they exerted a fierce rivalry with native convoying craft manned by Cantonese, but their crews in addition were constantly accused of the most

lawless acts of depredation both ashore and afloat. At length, on June 25, 1857, a large fleet of Cantonese junks made their appearance off Ningpo, and took possession of the Portuguese 'lorchas.' The crews escaped to the shore, but were pursued with revengeful fury by the Cantonese, who slaughtered some forty of their number, and completely sacked the house of the Portuguese Consul, who fled for refuge to the Roman Catholic Mission buildings. This tragical outbreak put a stop to the operations of the Portuguese at Ningpo.[22] The next event of importance in connection with the history of the port of Ningpo was the capture of the Chinese city by the Taiping rebels in December, 1861. The northern half of the Province had already been overrun by the insurgents, and on November 9 the important city of Shaohing Fu, distant some 90 miles from Ningpo, had fallen into their hands. The intermediate district towns were successively captured, and the insurgent leaders addressed themselves to the foreign consuls resident at Ningpo, calling upon them to remain neutral during the impending capture of the city, with assurances that no injury should befall the foreign residents. In fact, whilst the Imperial authorities looked on in a state of helpless terror, the insurgents were determined upon straining every nerve for the purpose of obtaining possession of a seaport, through which they might receive supplies of arms and ammunition for the prosecution of their conquering career in the remaining parts of China. Foreign merchants, animated by the prospect of large profits, were not slow to stimulate the insurgent leaders in the prosecution of their designs. The result is summed up in the following extract from an official report by Mr. Harry Parkes:

Ningpo fell to the rebels on the morning of the 9th of December; they had long been expected, and by foreign assistance the city had been placed in a complete state of defense, for it appeared to a Chinese foe to be almost impregnable; a broad and rapid river running under its walls on two sides, whilst on the remaining or land side it was also protected by deep and broad canals crossed in two places only by the cross-ways which lead to the South and West Gates. Six heavy foreign guns besides light artillery commanded each of these causeways, and rendered them, as it was supposed, impassable. The garrison numbered between 3,000 and 4,000 men.

The rebels appear to have seen little to fear in these preparations, and to have been only anxious to ascertain that they would not have to contend

[22] G. Wingrove Cooke, *China*: being *The Times* Special Correspondence from China in the years 1857–1858, pp. 130–158.

with foreigners in arms; they were moving on the city on the 2nd of December, and when only ten miles from it, agreed on receiving a foreign request to delay the attack for a week. On the 8th they advanced some parties up to the city walls, and on the 9th at 7 a. m., when the week allowed had just expired, they crossed the causeway at the South Gate, escaladed with three common ladders taken from the cottages close by, and at 8 a. m., the whole city, which is four miles in circumference, was in their possession.

From the first moment of their entry into the city, the rebels displayed great anxiety to remain on good terms with foreigners of all nations, and refrained from attacking or molesting in any way the various Protestant and Roman Catholic missionary establishments within the walls. An active trade in arms and rice at once sprang up, silk and other merchandise being exchanged for these necessaries, but notwithstanding the usual efforts on the part of the rebel chiefs to preserve order among their soldiery, the city was deserted by its population, which fled *en masse* to swell the flood of refugees then inundating the foreign settlements at Shanghai, or to seek shelter among the European dwellings on the north bank of the river opposite Ningpo.

The British and French naval officers commanding the vessels of war lying in the river were directed to protect this tract of land from any invasion by the insurgents; whilst at the same time stringent measures were taken as far as possible to prevent British subjects from supplying the rebels with munitions of war. Early in 1862 a vessel (*the Paragon*) was seized with a large cargo of guns and other warlike stores which were confiscated, and these measures among others, contributed to disturb the tenor of the official relations which had been carried on with the rebel chiefs in occupation of the city. Complaints were made of the random discharge of musket-shots in the direction of the foreign settlement and the foreign ships of war, and certain demands including the disarmament of a rebel battery commanding the river and the giving of satisfactory guarantees of good conduct on the part of the rebels during their future proceedings at Ningpo were made by the British and French authorities. The replies to these demands were considered unsatisfactory, and further provocation was given on the morning of the 10th of May, 1862 by a discharge of musketry from the city walls in the direction of H.M.S. *Encounter*. Her commander, Captain Roderick Dew, at once gave the signal to clear for action, and a

general bombardment of the city at once commenced from all the vessels of war, both English and French, then lying in the river. At the end of five hours the walls were scaled and the Taiping forces retreated from Ningpo. The Imperial authorities, who, in expectation of this result, had for some time past been residing in the foreign settlement, were at once put in possession of the city. Since this period no event of striking importance had occurred, the interval had been occupied in the gradual restoration of the inhabitants to their homes and of commerce to its accustomed channels. For upwards of a year subsequently to its recapture, indeed, Ningpo was the seat of operations directed towards the capture and recovery of the remaining cities of the Province of Chekiang from the hands of the insurgents.

The site occupied by foreign residences is the promontory formed at the junction of the two rivers opposite the northern face of the city, and hence is known as the Pih Ngan or North Bank. The foreign consular and mercantile establishments occupy two sides of this promontory, *viz.*, the line of river bank opposite to the city, and the line at right angle to the former which extends in the direction of the sea. Two frontages of about a mile each in length are thus occupied, but no special limits for European residences have ever been defined. The following remarks upon the settlement occur in Mr. Consul Fittock's Official Report for 1864:

> Except along the harbor face, land is not costly. A large tract in the center of the settlement is owned by foreigners, and through this a rough straight riding-course has been constructed, forty feet wide and a mile long, and this forms the chief resort of foreigners in search of exercise. The general roads in the town are the old Chinese, badly-paved and filthy lanes, common to their cities and suburbs, the march of improvement having by no means kept pace with the increasing importance of the trade.

Previously to the rebel capture of Ningpo, the northern bank of the river was but thinly populated with Chinese residents, the water frontage being occupied principally by timber yards, interspersed with the dwellings and compounds of the foreign residents. In 1862 the large influx of refugees from the city to the north bank, which remained under the protection of the foreign vessels of war, caused the native streets and lanes to be largely extended. The British Consulate stands at a little distance from the river-bank, opposite the Salt Gate of the city, on which account the river flow-

ing past the walls at this point is frequently termed by foreigners the 'Consulate Creek'. The United States and French Consulates also face the city.

Owing to the comparative insignificance of the trade at this place, the foreign community is by no means large. In 1865 the following mercantile establishments, commission agencies, and stores were enumerated: British, 43; German, 5; United States, 2; French, 1. The total number of foreign residents, exclusive of missionaries, does not exceed sixty. But since that year, the influx of disorderly characters of all nations has necessitated the institution of a small police force, consisting of some three or four constables, whose wages are defrayed by the community, and who hand over any prisoners arrested to the consuls of their respective nations.

§ 4. *The Treaty Port of Foochow.*

Attention having been at an early period drawn to Foochow as an advantageous shipping port for the black tea grown in its neighborhood, it was included among the ports declared open to foreign trade in 1842. In June, 1844, Mr. Tradescant Lay was despatched thither as the first British Consul, but he had to fight through the question of the rights of aliens to enter the city. The Viceroy, Liu Yun-ko, was believed to be an enemy of the aliens, and stood up strongly against the opening of the port. Furthermore, the Manchus, who formed the garrison of the city, were certain to resent the disgrace cast upon their arms, and besides the natives were as hot-headed and turbulent as the Cantonese. So the British Consul had to face these opposing forces very carefully, and the actual opening of the port was not secured until the end of February, 1845, when Mr. Davis, the British plenipotentiary, carried through his demand for the observance of the treaty-right by threatening to withdraw the Consul altogether.[23]

Following the entrance of the aliens into the city, Mr. Rutherford Alcock, the British Consul, on April 26, 1845, gave notice that the following trade regulations must be observed in the port of Foochow: The limits of the port of Foochow were declared (Article 1) to extend from the bridge to the Wufu Mun. The Chinese officer at the station within the pass was invested (Article 2) with the power to provide any vessel, desiring to enter the port, with a pilot. British vessels

[23] J. F. Davis, *China Since the Peace*, vol. 2, pp. 51, 115, 117.

were permitted (Article 3) to remain in the port with a view to ascertain the state of the market without restriction as to time, and should they desire to depart without breaking bulk, no port dues were to be demanded; but the Captain was in all cases required to deliver his ship's papers, bills of lading, and other documents, into the hands of the Consul within twenty-four hours after arrival. The payment of duties was (Article 4) to be made either in sycee or coined money at the rates already established at Canton. Cargoes (Article 5) were to be loaded and discharged between sunrise and sunset; and sailors on liberty (Article 6) were to be accompanied by an officer or responsible person, and strictly enjoined to abstain from all acts calculated to give offense to the inhabitants, injunctions to the same effect having been issued by the Chinese authorities to the people of Foochow Fu.[24]

The first years of intercourse with the natives were marked by successive outbursts of turbulence, commencing with a serious riot in March, 1846, when a mob of natives, assembled for an attack on some Cantonese connected with the foreign residents, forcibly entered and plundered the houses of several aliens, for whom an indemnity of some $46,000 was eventually exacted from the local authorities. Complaints of insult and outrage in individual cases continued to be frequent in ensuing years, nor, as has been remarked above, is the antagonistic attitude of the populace towards Europeans yet subdued. Besides as a commercial port, Foochow was then considered as being valueless, and at first there were proposals for giving it up for an exchange of Wenchow. In 1850, Mr. Bonham, the British plenipotentiary, proposed to exchange Foochow and Ningpo for Hangchow, Soochow, and Chinkiang, three inland ports, but this was nothing more than a proposal, and the ports were never exchanged. This condition existed until 1853 when active measures were taken for the extension of the trade of the port. This was largely due to the fact that the tea trade could not be shipped to Shanghai or Canton on its ordinary route for export, as those communications were blocked up by the Taiping insurgents. So in that year an energetic American firm opened a connection, by means of native agents, with the interior tea-districts, and made extensive shipments to New York of the same description of teas which were formerly carried across the mountains to Shanghai or Canton. The

[24] *Chinese Repository*, vol. 14, p. 247.

enterprise proved to be successful, and the same venture was repeated by others in the following year, and from this period the export trade in tea steadily increased.[25]

Owing principally to its position, Foochow escaped capture or disturbance by insurgents during the prevalence of the Taiping Rebellion, though fears for the safety of the city had more than once been felt. These apprehensions led to a request on the part of the authorities in 1865 for the assistance of British officers for the institution of a body of troops in the use of foreign arms. For this purpose a camp of instruction was formed, and several hundred of Tartar soldiers were very creditably drilled. All fear of a rebel attack was dissipated, however, with the destruction of the last remnants of the Taiping insurgents in February, 1866.

The residences of the European community are scattered over the hilly ground which rises on the south bank of the Min, opposite the little island of Chung-chow, and communicating with it and with the city by means of the 'Big Bridge'. The British Consulate, comprising then several detached buildings, lies not far from the water's edge, and almost immediately opposite the foot of the Bridge. On either side of these buildings, and for a considerable distance to the rear, lie the 'compounds' or enclosures containing the mercantile establishments of the British and foreign residents, dispersed without settled plan, but connected by irregular roads and paths.

§ 5. *The Treaty Port of Amoy.*

Europeans began to trade at Amoy very soon after their appearance in China. In 1544, the Portuguese resorted to it in large numbers, but in consequence of their ill-conduct towards the native traders and country people, the authorities forcibly expelled them, burning thirteen ships, and killed about 450 Portuguese residing there. But the foreign commerce at this port was again revived by the English and Portuguese, who sent vessels thither as late as 1730, when the Chinese government centered all the foreign trade at Canton, and only permitted Spanish ships to trade at Amoy. Other foreigners continued for many years nevertheless to hold intercourse with this port. Their presence, however, was not acknowledged until its capture on the 27th of August, 1841, under Lieut.-General Sir Hugh Gough and Rear-Admiral Sir W. Parker.

[25] J. F. Davis, *China Since the Peace*, vol. 2, pp. 34, 104; *North-China Herald*, February 18, 1854; *Chinese Repository*, vol. 15, p. 479.

By the treaty of Nanking of 1842, Amoy was thrown open to foreign trade, and it was formally opened by the arrival of the British Consul in June, 1844. The island of Kulangsu, which bounds the western side of the harbor, may be termed the 'foreign settlement' of Amoy. This island became the foreign residential quarter without any special grant from the Chinese authorities. The inhabitants of this island were as a rule very civil to foreigners, and it was said that there was no danger to walk about the island at any hour of the day or night. The roads were well made and maintained at the expense of the foreign community.

Although as a residence Amoy was far less preferable than Kulangsu, a few firms, some of the missionaries, and the consulate officers still transact business on the Amoy side; but in most cases their private residences were on the island of Kulangsu.

§ *6. The Treaty Port of Canton.*

By the treaty of Nanking of 1842 Canton was declared as one of the 'treaty ports' for foreign trade. But the natives continued to be hostile to foreigners, and attempted to restrict the aliens within the boundaries of the old factory. Even as late as 1846, the common people and gentry of the great metropolis were threatening against foreigners in case they entered the walls of the city. Foreigners were prevented from having houses rented within the city walls, and some of those unfortunate landlords who leased their real estate to aliens were thrown into prison on the ground, that they refused to eject the lessee.[26]

As a consequence of the determination of the natives to block the attempt of the aliens to secure an entrance into the city, the result was disastrous to life and property. As early as December 7, 1842, the spirit of hostility was demonstrated through the form of mob violence. On that very day 170 lascars came on shore leaves from the ships at Whampoa to the factories with no one to control them. In the morning there was a brawl which soon led to a street riot. As the mob increased in size very rapidly so they took refuge in the factories. Then the mob attacked the easternmost factories with the result that several factories were burnt down by midnight. During this attack there was no plundering, but on the next day pillaging began, which was promptly crushed by the Chinese troops.

[26] *Chinese Repository*, June–November, 1846.

The Viceroy, who was very friendly to the aliens, took prompt action, and ten of the ringleaders were decapitated, and an indemnity of $267,000 was paid for the destruction of the property.[27]

This spirit of hostility continued, and in 1844 another riot was recorded in the history of Canton. In this year a flagstaff was erected in the American 'garden' of the Canton factories in front of the American Consulate. The arrow, serving as its vane, was held by the natives to be the cause of the epidemic then prevailing. When this was explained to the Consul, he promptly ordered the vane to be removed. Notwithstanding this, a mob on June 15 attacked several Americans while walking in the American 'garden' with brickbats, and the latter were "compelled to have recourse to firearms, in defense of their lives against the violence of a mob of ladrones or desperadoes," and in the course of the affray, a native was killed. In the diplomatic correspondence between Mr. Cushing, the American Minister, and Kiying, the Chinese plenipotentiary resident at Canton, the latter struck the keynote of his difficult position and expressed the opinion that the victim's life might possibly have been taken without just cause, and that the Cantonese would probably demand a life for a life taken. This case was tried by the Consul with a jury of six American residents of Canton, and the jury was of the opinion that "the killing was a justifiable act of self-defense." This case was finally settled by the payment of a compensation by the officials to the claimants.[28]

All the above troubles were caused by the aliens in their demand for an entrance into the city. This right of entry was based upon the treaty of Nanking under Article 2, on which "British subjects, with their families and establishments, shall be allowed to reside, for the purpose of carrying on their mercantile pursuits, without molestation or restraint, at the cities of Canton, Amoy, Foochow, Ningpo, and Shanghai."[29] This interpretation was accepted by Kiying as on July, 1843, he wrote to Sir H. Pottinger that, as the cities at the other ports might be entered, he saw no reason for any exception at Canton, but "the trouble is that the temper of the people of Kwangtung is unlike that of the people of Chekiang and Kiangnan . . . unsettled in mind by the war, they are easily

[27] *Ibid.*, December, 1842.

[28] *Chinese Repository*, October–November, 1845, June, 1846, October, 1847.

[29] 30 *British and Foreign State Papers*, p. 398.

accessible to doubts and suspicions," and that he was busily engaged in removing this unreasonable suspicion, but he added that they must exercise patience for some time. Subsequently, the British plenipotentiary demanded the execution of the stipulation in the treaty of Nanking, but to every demand a reply of placards from the gentry was given announcing their undying resolution to resist the attempt. In order to calm down this opposition, Kiying, the plenipotentiary and Viceroy, and Hwang Ngan-tung, governor of Kwangtung, issued a joint proclamation on January 13, 1846. "You (natives) ought" said the proclamation, "to consider that the two nations, England and China are now on friendly terms, and that the august Emperor, with equal benevolence, views as one the people of both the foreign and the inner lands, making no difference between them. Moreover at all the five free ports—except at Amoy, where there are no walls, namely, at Fuchow, Ningpo, and Shanghai —the English are permitted to enter the cities, and no troubles have ensued. It is hard that Canton alone should offer obstructions and opposition," and in conclusion the proclamation said, "Let distinctions be put away by every one; let all lay aside their suspicions, and never again, as before, raise opposition. Thus they will maintain peace and friendly relations . . . Let each one perform his duty, and yield implicit obedience. Let no one oppose."

This proclamation, however, was immediately burnt and turned down during the night. so that at daylight scarcely a shred of it remained. In its place a placard from the gentry and people of Kwangtung was posted up denouncing the weakness of the authorities, and expressing a determination to oppose the entry of the English to the end. On the next day the Kwangchow Fu, (the prefect), who was passing through the city, was attacked by the natives, a most unusual occurrence for a Chinese official in his seat of government. Not being satisfied with this, the natives followed him to his yamen, where they burnt and plundered for a time. The other officials, the Namhoi-hien and the Hiehtai, who came to restore order, were driven away. But order was soon re-established, and the viceroy and the governor issued two joint proclamations, in one of which they said:

We are ashamed and covered with sweat in thinking of our inability, on the one hand to make the foreigners yield, and on the other to secure the confidence of our own Chinese; it is utterly impossible for us to exhibit to you,

the people, all the toils and troubles connected with pending affairs, but, that you should think we wish to treat foreigners generously and our own people harshly, is to us utterly incredible, . . . As the people are unwilling that the English should enter the city, how can we consent to entirely thwart their feelings, and improperly comply with the wishes of the foreigners?

Thus Kiying had to face a very hard problem. In addition to the fact that there was a strong party in the empire which refused to accept the result of the arbitrament of the war, and continued its criticism of the treaty, and its hostility to its stipulations, he was opposed by the provincial authorities who accepted the doctrine of the anti-foreign party. It was therefore fortunate that the British government, realizing the difficult position of Kiying, consented to incorporate in the first article of the Convention signed at Bocca Tigris on April 4, 1846, the following stipulation: "His Majesty the Emperor of China having, on his own part distinctly stated that, when in the course of time mutual tranquillity shall have been insured, it will be safe and right to admit foreigners into the city of Canton, and the local authorities being for the present unable to coerce the people of that city, the plenipotentiaries on either side mutually agree that the execution of the above measure shall be postponed to a more favorable period; but the claim of right is by no means yielded or abandoned on the part of Her Britannic Majesty." By Article 2 of the same convention British subjects were secured full liberty and protection in the neighborhood comprising seventy localities outside of the city of Canton of which the names were communicated by the district magistrates to the British Consul on November 21, 1845, and that they were permitted to make excursions on the two sides of the river, where there were not numerous villages.[30]

Just three months after the conclusion of this Convention, a serious disturbance again occurred at Canton. On July 4, 1846, Mr. Charles S. Compton, a British merchant, kicked over the stall of a fruit-seller which was in his way at the bottom of Old China Street. By his indiscretion the indignation of the populace was so aroused, that a riot would have resulted, had not the matter been at once adjusted by a petty officer of the guardhouse. But, unfortunately, on the 8th instant of the same month, when a foreigner was wrangling with another fruiterer at the entrance of Old China

[30] *Chinese Repository*, 1846, pp. 46–55, 277, 432, 624.

Street, Mr. Compton came up with a cane, with which he proceeded to beat the fruit-seller. Not only this, but, in the course of the quarrel, Mr. Compton laid hold of a man and took him into the Chung-ho Hong, where he tied and beat him, thus causing the riotous assemblage of a large number of Chinese. The mob increased rapidly in force, the riot spread, and an attempt was made to destroy some parts of the foreign factories. The English merchants then came out armed with firearms, and the mob was dispersed; but the English, not content with this, divided themselves in parties to pursue the rioters. During this pursuit, three Chinese were killed and six were wounded. This loss of life occurred not at the place where the riot began but at a considerable distance from it. Finally, peace was restored in the factory and its vicinity through the protection of Chinese troops.

The opinion of the British plenipotentiary to China and the British Foreign Office was the same on this case. The British Government held that the Chinese authorities were responsible for the preservation of order and the protection of life and property within Chinese territorial jurisdiction and warned that, "if the Chinese shall be unable or unwilling to keep order, British subjects will defend themselves." Meanwhile, the British Consul conducted an inquiry into the matter of the riot, and Mr. Compton was charged before the Consular Court for violating Article 13 of the Treaty of 1843 which provided that "whenever a British subject has reason to complain of a Chinese, he must first proceed to the Consulate and state his grievance." Through instructions from the British plenipotentiary, Consul Macgregor fined Mr. Compton $200 (Spanish) "for having on July 4 last kicked down the stall furniture of a fruiterer at the bottom of Old China Street." This judgment of the British Consul, as he said in a communication to Mr. Compton was based on the Hongkong Ordinance, No. 2 of 1844. However, the British plenipotentiary said that it should be based on Ordinance No. 5 of 1844. Mr. Compton was compelled to pay the fine to the British Consul under protest. This case finally went to the Supreme Court of Hongkong, where judgment was rendered on November 24. The Chief Justice, in giving his decision, remarked that the case was at first small and insignificant, but had become important from what had occurred connected with it. Further, he stated:

There has been a total disregard not only of the forms of justice but of justice itself. Had Mr. Macgregor been in any doubt as to the form of proceeding he ought to have referred to Ordinance No. 7, where it is distinctly pointed out. By it all proceedings in the Consular Courts shall be in conformity and correspondence with the proceedings which in like cases would be had, according to the law and practice of England—the Consul has power to summon and examine witnesses on oath—their depositions must be written down—the person accused must hear the evidence, and have an opportunity of exculpating himself. But this Ordinance seems to have been totally disregarded, and the whole case appears to have been determined by assertions on the one side, and assumptions on the other. I am obliged to go to the sentence to discover what was the charge—That sentence is unjust, excessive and illegal . . . Though the Ordinance No. 2, provides that in all cases adjudicated on, the evidence recorded shall be forthwith transmitted to the Supreme Court of Judicature at Hongkong, this is the first case which has been sent, and it would not have been sent without application. This case, therefore, becomes of great consequence, not merely from its own merits, but to define the procedure in Consular Courts, which ought to be regulated by Ordinance No. 7. This, in a great measure, supercedes No. 2.

The Chief Justice here read the letter of the British Envoy to the British Consul at Canton of October 18, 1846, in which the Envoy directed the Consul to fine Mr. Compton under Ordinance No. 5 instead of Ordinance No. 2, and then continued:

This shows that Mr. Compton received sentence under one Ordinance and was fined under another, which is contrary to all the principles of English justice. I should not suppose from the title of Ordinance No. 5, that this case came under it. But this is set at rest by Section 4, which gives power to punish, in a summary way, any infringement of the Treaties, not punishable by the law of England. Now Mr. Compton's case was one which the law of England, and also the law of this Colony, takes cognizance of. No. 5 refers merely to Commercial Regulations.

I have now noticed the law, and shall next advert to the facts. The charge founded on what took place on the 4th, is really abandoned by the Chinese. In the correspondence there is a want of candor on the part of the Consul. He refers the case to the plenipotentiary. The latter says he imposed the fine himself, no confirmation was therefore necessary. By this sentence Mr. Compton is fined for one crime in particular, and for others in general.

The Chief Justice then read and commented upon the communication from Kiying, the Chinese plenipotentiary, to the British Consul, and concluded as follows: "I repeat again that the whole

case is founded on assertion on the one side and assumption on the other, without any evidence. Mr. Macgregor says the quoting of Ordinance No. 2, instead of No. 5, was my own error—but there is no reason why Mr. Compton should suffer for Mr. Macgregor's error. It is evident, in my opinion, that Mr. Compton was sentenced, apparently for what took place on the 4th—but really for what occurred on the 8th. Had there only been some small mistakes as to matters of form, I should have considered it proper merely to modify the fine to a small sum; but the whole proceedings have been so exceedingly irregular as to render it necessary to reverse the judgment altogether; and that the sentence of the Court, that the sentence of Mr. Macgregor, imposing a fine of $200 upon Mr. Compton, be reversed."

The decision of the Supreme Court was regarded as a disappointment to the British administrative authorities. It in fact dealt a hard blow not only to the British Foreign Office, but also to the British plenipotentiary in China and the Consul at Canton who expected to exercise such control over British subjects so as to deprive the Chinese of any excuse for failing to maintain order. Sir G. F. Davis, the British plenipotentiary, writing to Lord Palmerston on November 12, 1846, said:

> The late ferment among the English merchants at Canton, in consequence of the fine I ordered on Mr. Compton, may perhaps not greatly surprise your lordship, who were cognizant of the proceedings of Mr. Innes under Captain Elliot, and who perhaps heard the evidence of Mr. Inglis, another merchant, who declared, "We never paid any attention to any law in China that I am aware of" . . . I am not the first who has been compelled to remark that it is more difficult to deal with our own countrymen at Canton, than with the Chinese Government; and I offer the best proof of this in the fact that it has cost me infinitely more trouble to make Mr. Compton pay a fine of $200 than to obtain a compensation to our merchants of $46,000 for losses which accrued partly from their own misconduct.

In closing with this case, I may quote the following from a competent authority's work:

> Lord Palmerston stated that he intended to refer the whole proceedings, especially the judgment of the chief justice, to the law officers of the crown, and that he entirely approved the fine of $200. (He continued): "It cannot be tolerated that British subjects should indulge towards the people of China in acts of violence or contumely which they would not venture to practice

towards the humblest and meanest individual in their own country." Sir J. F. Davis was instructed that, in returning the fine to Mr. Compton, "You will carefully abstain from offering him any apology or amends;" and in a letter from the Foreign Office to Mr. Compton, he was informed that the government "thoroughly approve the fine, and only regret that you escaped penalty owing to defect in the form of proceedings against you." [31]

The next event of importance occurred on March 12, 1847.[32] On this day six British subjects and one American citizen went to Fatshan for a visit. This place was then known as one of the great industrial centers in China, but was turbulent and uncontrollable, so that no foreigner should have been allowed to go there under the unfavorable circumstances of the time. On arriving at Fatshan they landed under the escort of a petty official, the people began to exhibit a hostile attitude and to stone them. As the petty officer stood firmly on his duty to defend the aliens so the party was finally able to get back to their boat after being subjected to repeated volleys of stones. The British plenipotentiary protested against this outrage and demanded that reparation should be given, and being dissatisfied with the Chinese authorities' reply, he ordered a military force to be despatched to Canton. By April 3 the British forces had succeeded in effecting military occupation of the factories at Canton, after having taken the forts at the Bogue and in the Canton River. The Canton authorities were again confronted with another assault on their city, and were thus compelled to discuss the ultimatum of Great Britain, and a convention was signed on April 6, 1847. Under this agreement [33] Kiying, the Chinese plenipotentiary, accepted the following terms:

1. The intention of returning my visit in the city is excellent, but the time for it ought still somewhat to be delayed. It is therefore now agreed that two years from this day's date British officers and people shall have free entrance into the city.

2. Whenever Englishmen go on shore to walk, and meet with insult, the local authorities must investigate the matter and punish (the aggressors); and the space of one day's journey, just as at Shanghai, is also assigned at Canton (for such excursions).

[31] Morse, *International Relations*, pp. 382–384; *Chinese Repository*, July, 1846–March, 1847.

[32] *Chinese Repository*, vol. 16, pp. 190–200.

[33] Hertslet's *China Treaties*, vol. 1, pp.17–18.

3. The criminals who in October last year wounded some Englishmen have, though pursued, not yet been taken. As, however, vigilant search is made at present after them, they will soon be apprehended.

I have, on account of the assault made in March, frequently sent officers to Fuhshan (Fatshan) to investigate and manage this affair. The deputed mandarins now report that they have already traced (the aggressors), and several of them will be caught within two or three days, and sent to the provincial city to be judged. One of our Mandarins will then settle as to the place where they are to receive punishment, with an officer of your honorable country, that it may be done without loss of time.

4. The territory of Honan (opposite Canton) is place for trade, the renting of warehouses or of ground for building houses is therefore fully conceded. This will be managed properly by the Consul and the local authorities in accordance with the provisions of the Treaty.

5. According to the American and French Treaties, the building of churches in the Five Ports is conceded, and it is therefore agreed upon that a spot in the neighborhood of the foreign factories, outside of them, may be rented for erecting one.

It is a laudable act to rent ground at Whampoa for making graves, and likewise in conformity with the Treaty. The Consul in conjunction with the local authorities will settle this matter properly according to the Treaty.

6. I have already given orders to the old Hong merchant to carry into effect (the affairs about the building of the bridge and cookhouse), and shall urge him to do this properly.

7. The 7th Article is proposed with a view of preventing the creating of disturbance between the mariners of our respective countries, and hence the river (before the foreign factories) must be kept clear (of boats). We shall therefore order the officers of that station to drive away (the boats) from time to time.

The next turbulent event took place on December 5, 1847. On that day Messrs. Small, Balkwill, Bellamy, Brown, W. Rutter, and M'Carte, six young Englishmen, started on an excursion up the river and landing at a village three or four miles off, called Hwang-chu-kee, proceeded inland. On the same day two of them were killed. The other four fled, but after some resistance they were captured and on the next day they were killed. During the affray one native was killed and one wounded. On being informed of the matter, the Chinese plenipotentiary acted promptly and took military occupation of the village, which action was regarded as a very heavy punishment. Soon after this fifteen men were arrested as having taken part in this dreadful violence. It was finally

agreed between the Chinese and British authorities that justice should be administered at the place where the crime was committed. On December 21, in the presence of Chinese and English authorities, both civil and military, four of the criminals were beheaded. The other eleven criminals were provisionally sentenced, one to decapitation, one to strangulation, three to banishment to the frontier for life, and six to bambooing and banishment for three years, and when the Board of Punishment later approved these sentences they were all enforced, except as to one of the culprits who died during the period of provisional sentence.[34]

In 1848, certain regulations were agreed upon by the British and Chinese authorities for the protection of foreigners during their excursions into the surrounding country near Canton. By these regulations it was provided (Article 1) that eight policemen, whose names were to be registered at the British Consulate, should be in constant attendance at the principal guardhouse in Old China Street, for the special purpose of attending foreigners who should desire to make excursions for recreation into the surrounding country. On such occasions the special officer at the station and the assistant magistrate of Nanhai were on the request of the Consul to appoint two policemen and a linguist to accompany each party, even if there should be two or more on the same day, to the respective places indicated in the request. These regulations also provided (Article 2) that on foreigners going out, the Consul, in order to prevent mistakes, would give previous notice thereof, and state the particulars to the special officer at the guardhouse, who would appoint the requisite number of policemen and linguists to proceed to the factory where, at the time when, their services might be wanted. It also stipulated (Article 3) that if any of the policemen should give rise to troubles, the special officer would, as occasion might require, exchange them for others and give information thereof to the Consul. It further required (Article 4) the district magistrate to pay the salary of the policemen, and prohibited them from demanding even the smallest extra remuneration for services. Further, it provided that they were to be distinguished by official caps and dresses, and by waist-badges, in evidence of their authority. Then it provided (Article 5) that the policemen and linguists so appointed must, on accompanying foreigners by water, go in the

[34] *Chinese Repository*, vol. 16, pp. 611–613; vol. 17, pp. 54–55, 157–158, 264, 320.

boats of the latter, as they might fall behind or go astray if embarking in separate vessels.[35]

At the beginning of the second half of the year 1848, the question of the right of entry to the city of Canton was again a vital diplomatic problem. As early as June 7, 1848, the British Minister, Mr. Samuel George Bonham, wrote to the Chinese plenipotentiary, suggesting that preliminary measures should be taken to assure the enjoyment of that right, which was to take effect on April 6, 1849; but in the reply, the Chinese plenipotentiary pointed out the disadvantages of insisting upon and the difficulties which would attend the exercise of the right. Further correspondence having elicited yet other objections from the Chinese plenipotentiary, Lord Palmerston wrote expressing his doubt of the actual value of the right, and suggested as a compromise that it should be restricted to the minister or the Consul on occasions when they should visit the Chinese plenipotentiary, and that they should then be attended by a Chinese escort. After the most careful consideration, he again instructed Mr. Bonham that it was inadvisable to insist upon a privilege which could scarcely be enjoyed with security or advantage if it had to be maintained by armed forces; and he in effect authorized Mr. Bonham to evade the issue.

Meanwhile placards addressed to the people of Canton appeared in the streets, and the whole city was again living in a state of excitement. The placards announced the popular determination to resist foreign intrusion, and declared that if the aliens should ever attempt to enter, they would be destroyed. The following extract may be taken as a typical one: "United in mind and strength, at one beat of the drum we will take them (the aliens), and absolutely kill every one of the barbarian rebels, and not leave a blade of grass an inch high, nor allow the creepers to spread".[36]

From this time on the diplomatic battle continued with much vigor. In the meantime the Cantonese showed a disposition to renew their acts of aggression against the foreign residents. This hostile spirit increased so rapidly that in 1856 another serious incident was recorded in the annals of the city. On October 8, 1856, the Hongkong-registered lorcha *Arrow* lay off the port of Canton. Early in the morning several Chinese officers, together with a com-

[35] *Chinese Repository*, 1848, pp. 104–105.
[36] *Ibid.*, March–April, 1849.

pany of Chinese troops boarded the vessel, and hauled down the British flag, and the crew, which were composed of twelve Chinese, were bound and taken into the guard-boats. The master, Thomas Kennedy, was then visiting another lorcha in the vicinity. He was, however, able to get back before the soldiers left with the prisoners, but his protest for the arrest and removal of his crew was unheeded. Harry S. Parkes, the British Consul, went personally on the guard-boat with the demand that they should be taken to the Consulate for examination, but this was refused. Then he wrote to the Chinese High Commissioner, demanding that the crew should be returned to the lorcha, and stating in case there was any charge of crime they would then "be conveyed to the British Consulate, where, in conjunction with proper officers deputed by your Excellency for the purpose, I shall be prepared to investigate the case."

The Chinese High Commissioner Yeh Ming-chin replied on the 14th that of the twelve men seized, nine were returned on board the *Arrow*, but that three men were detained for further investigation, and at the same time maintained that the vessel was owned by a Chinese subject and was therefore not entitled to the protection of the British flag. But the British Consul refused to receive the nine men returned in this off-hand way. The reply was deemed as unsatisfactory, so a government junk was seized as reprisal by the British authorities, but this action had no effect on the Chinese High Commissioner. Yeh then, on the 22nd, returned the twelve men under the condition that two of them should be sent back for further examination. Mr. Parkes refused thus to receive them, and as no apology was given the matter passed into the hands of the naval authorities.

The Chinese Commissioner persisted in his policy of refusing to make any concession to the British authorities, as the case was believed to be seriously connected with the opium smuggling which was then an ordinary business routine of many of the Chinese importers. At the outset the case was of little importance, but its importance increased with the accretion of other demands which the British authorities took the opportunity of making, in order that other and greater questions might find their settlement.

On October 23, Admiral Seymour began to secure military possession of all the forts along the river. Having completed this work, he opened fire on the city on the 26th. Against all these acts Yeh

protested in vain, and he then issued a proclamation which constituted a declaration of war against England on the 28th.

During the ensuing hostilities the Americans and the French, while believing that satisfaction for their demands could be obtained only by force, endeavored to maintain an attitude of neutrality. The government at Washington enjoined its representatives from doing anything which might involve the country in war. Both France and the United States had grievances against China and both had demanded the revision of their treaties; but their representatives were not permitted to cooperate with the British in aggressive action. In view of the situation, and on the direct request of Yeh, the Chinese High Commissioner, the American guards were withdrawn from Canton on November 16, leaving it to American citizens to decide for themselves if they would stay or not; and the French guard was withdrawn on November 22; both consular flags were hauled down on those dates.[37]

The American withdrawal from Canton was attended with the following incident: As Commander Foote was on his way to Canton on November 15, his boat was fired upon from the Chinese forts, although the American flag was prominently displayed. Commodore Armstrong had three warships at his disposal, so he determined to silence the forts which had committed the offense, and by the 22nd he had already dismantled them. Commissioner Yeh, on being informed of the facts, made an apology on December 5, stating that there was no matter of strife between the two countries, and that the design of the American flag would be communicated to the forts, and the result would serve to demonstrate the friendly relations which existed between the two countries. This was accepted as satisfactory, and the incident was closed.[38]

On December 14, fires were started at several places among the ruins of the Chinese houses at the back of the factories. Notwithstanding the strenuous effort to save them, all the buildings in the factories were reduced to a mass of ruins with the exception of one house, midway from front to back in the English hong (the old company's factory). For the defense of the settlement, an entrenchment was then made enclosing the two gardens. Another

[37] John W. Foster, *American Diplomacy in the Orient*, pp. 225–230.

[38] Charles S. Leavenworth, *The Arrow War with China*, p. 35 *et seq.*; J. W. Foster, *American Diplomacy in the Orient*, p. 225.

attack on unarmed non-belligerents took place in the same month. On December 22, the postal steam-packet *Thistle*, plying between Canton and Hongkong, was attacked by Chinese war-junks, but she was fortunate enough to be able to make her escape with only one Chinese person belonging to her crew being killed and two wounded. But on her way back to Hongkong, on December 30, after having passed the second Bar, a number of Chinese passengers having soldier's uniforms under their outer garments, produced concealed weapons and captured the vessel. Having killed all the foreigners, including the master, the mate, two engineers, four quartermasters, and three passengers, among them the Spanish Vice-consul at Whampoa, they ran the ship ashore and burned it.

In the meantime, another incident happened in the interior. In 1853 when the greater part of the province of Kwangtung and the whole of Kwangsi were seriously disturbed by the Taiping Rebellion, August Chapdelaine, a Catholic missionary, was unfortunately sent to Kwangsi for the purpose of spreading the gospel. He settled at Silin, in the extreme northwest corner of the province, where the provincial government had very little actual power of administration. For some time, however, he was well treated and encouraged by the magistrate of the city; but on February 24, 1856, this well-disposed magistrate's successor caused him to be arrested, and after a trial, during which he was subjected to various kinds of torture, he was put to death. After the lapse of almost half a year the French diplomatic representative at Canton received an accurate report of the case; and on July 25 he protested against what he called the "judicial murder," claiming that it was a violation of the French Treaty of 1844, particularly of Article 23, which provided that Frenchmen arrested for any cause in the interior should be sent to the Consul at the nearest port, and that neither the authorities nor the people of China might strike or wound any Frenchman so arrested. To this protest Commissioner Yeh replied that under the treaty mission work was restricted to the five open ports; that Kwangsi was much disturbed by rebels, who asserted, often no doubt falsely, that they were Christians; that such persons must be severely dealt with, and that the trial and execution were justified on the ground that the missionary was engaged in fomenting rebellion. Having failed to secure prompt redress from the Canton authorities, the French Government finally determined

to join the English in military operations against the Chinese authorities.[39]

Violent bombardment of Canton began on December 28, 1857, with a mixed force of 5,679 French and English infantry and marines. On the 29th the city wall was attacked on the northern part of the east front and in the afternoon the northern portion of the city was firmly held, while the south front lay under the guns of the warships. The next day the Chinese merchants had an interview with Mr. T. F. Wade, interpreter of Lord Elgin, the British plenipotentiary, and as a result they agreed on a joint arrangement for policing the city, which involved cooperation between the Chinese militia and the allied naval authorities. However, the troops, who had defended the walls, made no offer of submission, and the High Commissioner, Yeh, proposed no terms of peace. The commanders of the invading forces holding that Yeh, as head of the government, was responsible for all the troubles, and that he was the guiding spirit of the opposition, caused him to be arrested, on January 4, 1858, in the Tartar-General's yamen. After conference between the English and French authorities, it was finally decided to exile him to Calcutta, where he died within a year after his arrival. His body was sent back to Canton, but the people received it with no apparent mark of interest.[40]

When Yeh was captured and sent to Calcutta, Pikwei, Governor of Kwangtung, became automatically Viceroy and head of the Canton authorities. The French and English officials after careful consideration determined to place Pikwei in charge not only of the government of the city but also of that of the province; but his powers were to be exercised under the supervision of a commission representing the allies. On January 9, 1858, a proclamation was issued to the inhabitants by the allies, and another by Pikwei, announcing that, while the city remained under the control of the allied forces, the government was entrusted to the hands of Pikwei. This restoration was agreed upon on four conditions. The first was that a committee should be appointed by the allies; that its members should reside at the Chinese yamen for the purpose of assisting the governor in maintaining order; and that they should

[39] Henri Cordier, *L'Expédition de Chine*, 1857–1858, p. 158–222.

[40] Wingrove Cooke, *China*, pp. 258, 324, 328, 340, 431; *North-China Herald*, May 28, 1859.

be supported by a military force, which would patrol the city. The second condition provided that, beyond the limits held by the allied forces, all cases in which Chinese alone were concerned should be disposed of by the Chinese authorities; but the committee were to take cognizance of cases in which foreigners were concerned. Offenses committed within the limits held by the allies were to be dealt with under martial law. The third condition was that no proclamation should be issued by the governor, or in his name, until sealed with the seal of the committee. The last condition provided for the surrender of all arms and military stores.

To fulfil this arrangement three members were appointed to the committee. They were supported by a patrolling force of 100 English and 30 French, and they also organized a Chinese police force of 700 for the city and 600 for the suburbs for maintaining peace and order. The control of native inhabitants was left to the Chinese authorities, but rigid and stern justice was administered by the committee to English and French marauders, and, as a measure of conciliation, the blockade was raised on February 10. For three years the commissioners governed the city, and under them a just and equitable rule was substituted for the tyranny which had up to that time disgraced the administration of justice in the city.[41]

On the capture of Canton in December, 1857, the foreign merchants, who flocked back to Canton to re-establish trade, found the factory site presenting only the melancholy aspect of utter destruction. The river-front of Canton was also in ruins, partly from the conflagration which spread from the burning of the factories, and partly from the fire of the fleet, and the only accommodation available was that afforded by the godowns or warehouses on the opposite (Honan) side of the river, where formerly merchandise was stored preparatory to export. In a short time the entire river frontage was rented by foreign firms, who caused the native buildings to be altered into sufficiently comfortable temporary dwelling houses, pending the selection of a site for foreign residences. Much discussion took place in this respect, and it was eventually determined that an extensive mudflat covered with water at high tide, lying to the westward of the factory site, and known as Shamien or

[41] L. Oliphant, *Narrative of the Earl of Elgin's Mission to China and Japan in the Years 1857–1858–1859*, vol. 1, pp. 141–175.

"the Sand Flats", should be filled in and appropriated as the British settlement. Out of this an artificial island was created by building upon piles driven into the river bed a massive embankment of granite, of an irregular oval form, the interior of which was filled up with sand and mud. This immense undertaking occupied some two years, and required a total expenditure of $325,000, of which four-fifths were defrayed by the British and one-fifth by the French Government. The area was appropriated to the two governments in similar proportions; and on September 3, 1861, the British portion, divided into eighty-two lots, was put up for sale at public auction. Such was the competition at the time, based on the expectation of a flourishing trade, that the enormous sum of $9,000 and upwards was paid for many lots. The restriction as to the sale of land to none but British subjects, originally contemplated, was abandoned, and the land was made accessible to all except Chinese. The portion allotted to the French Government had remained unsold and unoccupied up to the late seventies. For all these lots, a ground rent of almost nominal amount (1,500 cash per mow) is paid annually by the owners to the Chinese Government.[42]

[42] H. Cordier, *L'Expédition de Chine*, 1857–1858, pp. 212–315.

Chapter III

The Treaties of 1858 and 1860

When affairs at Canton were put on a satisfactory basis, the British and French representatives agreed to carry out their instructions to open communication with the court at Peking. Similar letters were addressed to the Chinese Government by the Russian and American Ministers, but the reply in each case was that the English, American and French Ministers should conduct their communications with the Canton authorities, and the Russian Minister with the authorities on the Amur frontier. After some discussion and delay, the four ministers finally decided that they should proceed to the Peiho, in order, as Lord Elgin, the British Minister explained in a further letter to the Chinese Secretary of State, "that they might place themselves in more immediate communication with the high officials of the Imperial Government at the Capital." He further demanded that within six days a duly accredited plenipotentiary should meet him at Taku where they might negotiate about their affairs, otherwise he should "consider his pacific overtures to have been rejected, and deem himself to be thenceforward at liberty to adopt such further measures for enforcing the just claims of his government on that of China as he may think expedient." As no reply was received, the ministers determined to proceed to Tientsin, which they reached on May 30, 1858. The advance of the allies to a spot so near the capital changed the whole aspect of affairs, and the Imperial Commissioners, Kweiliang and Hwashana, were despatched from the capital with certain powers to negotiate with the allies. When they reached Tientsin, Lord Elgin refused to hold any communication with them on the ground that their credentials were deficient, and that they were envoys devoid of plenipotentiary powers. But the American and Russian Ministers, being less exacting, succeeded in concluding treaties with the commissioners. The treaty with Russia, which was signed on June 14, 1858, granted (Article 2) the right of correspondence upon an equal footing between the Russian Minister of Foreign Affairs

and the Prime Minister, or the First Minister of the Council of State at Peking, as well as permission to send diplomatic agents to that city upon special occasions. The right to trade was secured to Russians (Article 3) at the treaty ports of Canton, Amoy, Foochow, Ningpo, Shanghai, and in addition, at Taiwanfu in Formosa and at another port in the island of Hainan. Stipulations were made (Article 4) for the payment of duties by Russian subjects, and for the confiscation of imported articles of illicit trade; for the appointment (Article 5) of Russian Consuls in the open ports; for the treatment (Article 6) of wrecks and salvage, and also for the repair and revictualling of ships of war and merchant vessels in non-open ports of China. Disputes between Chinese and Russians were to be examined (Article 7) by the Chinese authorities in concert with Russian Consuls; Russian criminals were to be judged according to Russian law and Chinese by their own law, Russians committing a crime were to be sent beyond the frontier or to the Consul to be tried. Provisions were made (Article 8) for passports to missionaries.[1]

The treaty with the United States of America, which was concluded on June 18, 1858, likewise provided (Article 4) for correspondence between the United States Diplomatic Representative and the Chinese Government upon terms of perfect equality; and the American Minister, whenever he had business, was to have (Article 5) the right to visit and sojourn at the Chinese Capital. His visits were not to exceed one in each year, and was to complete his business without unnecessary delay. The appointment of United States Consuls in the open ports was duly authorized (Article 10); and on the arrival of a Consul duly accredited at any treaty port in China, the Minister of the United States was to notify the fact to the Governor-General of the province where the port is, who was forthwith to recognize the Consul, and grant him authority to act. Stipulations were made (Article 9) for the protection of the life and property of American citizens in the open ports, and for the extradition of criminals. The right was secured (Article 14) to American citizens to frequent the ports and cities (Article 14) of Canton, Amoy, Foochow, Ningpo, Shanghai, Swatow, Taiwanfu of the Island of Formosa, and any other port or place which should, by treaty with other Powers or with the United States, be opened to

[1] 53 *British and Foreign State Papers*, 966; Henri Cordier, *L'Expédition de Chine*, 1857–1858, p. 406 *et seq.*; *North-China Herald*, March 6 and April 17, 1858.

commerce, and to reside with their families and trade there, and to proceed at pleasure with their vessels and merchandise from any of these ports to any other of them.[2]

The treaty with France was the last one for signature, although it was completed in its draft on the 23rd of June. On the question of the residence of diplomatic agents as provided under Article 2 it followed closely the American stipulation that envoys were privileged to proceed to Peking when important affairs called them there; but in addition to that it was provided that if the right of a permanent legation were granted to any other of the treaty powers, France became at once entitled to the same privilege. Stipulations similar to those in the American treaty were made (Article 5) for the appointment of French Consuls in the treaty ports; and for the French citizens and their families to live and trade (Article 7) in the open ports. It was further provided that the following places were to be open ports: Kiungchow; Swatow (Chao-chow); Taiwan, Tamsui, both in the Island of Formosa; Tangchow (Chefoo); and Nanking. This treaty, as already stated, was completed on June 23 and might have been signed on the next day, but Baron Gros, the French Minister, "out of deference to his ally," deferred its signature until June 27, the day following that of the British.[3]

In diplomacy as in military pressure, at Tientsin in June, 1858, as at Canton during the preceding three decades, the English was the most aggressive and avaricious. The negotiations began on June 6 and continued through the successive periods in which the Russian, American, and French envoys were busied with their treaties. The last draft of the treaty was held on June 26, and on the same day the treaty was signed and sealed by the plenipotentiaries of the two governments. This treaty granted (Articles 2 and 3) the right of choice at the option of the British diplomatic representatives for his residence. It also declared that in addition to the ports of Canton, Amoy, Foochow, Ningpo, and Shanghai, opened by the Treaty of Nanking of 1842, it was agreed (Article 10) that British subjects might frequent the cities and ports of Newchwang, Tang-

[2] William M. Malloy's *Treaties, etc., between the United States of America and other Powers*, vol. 1, pp. 211–221; W. A. P. Martin's *A Cycle of Cathay*, pp. 180–181; J. W. Foster, *American Diplomacy in the Orient*, pp. 240–243.

[3] John W. Foster, *American Diplomacy in the Orient*, p. 241; Henri Cordier, *L'Expédition de Chine*, 1857–1858, pp. 422–435; 51 *British and Foreign State Papers*, 637.

chow (Chefoo), Taiwan (Formosa), Chao-Chow (Swatow), and Kiungchow (Hainan). Stipulations similar to those between China and other powers were made (Article 7) for the appointment of consuls in the open ports; and for the extradition of criminals (Article 21).[4]

In all these treaties, it was provided that the ratifications should be exchanged within one year from the date of signature. For this purpose Mr. Bruce, the British Minister, reached Shanghai on June 6, 1859, and M. de Bourboulon, the French Minister, on the 7th, but they were preceded in their arrival by Mr. Ward, the American Minister. When the three ministers met the Chinese plenipotentiaries, Mr. Bruce, speaking for himself and his colleagues, stated that he must decline to consider any questions connected with the treaty until after the exchange of the ratifications the limit of time for which was approaching its end, and that "his resolution to proceed to Peking for that purpose without delay" was "inflexible." The Chinese plenipotentiaries asked for an extension of time, as it required two months for them to reach Peking by the usual journey on land. The ministers, however, advised them to go by steamer, to which they replied that they dared not adopt so novel a mode of going to court without express authority, but they gave assurance that the reception of the foreign envoys would be friendly, provided they would anchor their vessels outside the bar of Taku, and then proceed to the Chinese Capital without much baggage and with a moderate retinue. Not long after this the three ministers left Shanghai and on June 20 they arrived at Taku.

On their arrival they were informed that they were forbidden to land, as there was no authority, civil or military, on the spot; that the river had been barred against the Taiping rebels by the people at their own expense, and that the garrison consisted of militia only. After having received this information, the British Minister, in conjunction with his French colleague, instructed Admiral Sir James Hope on June 21 to clear away the obstructions in the river, so as to allow the ministers to proceed to Tientsin. On the 24th, Mr. Ward, the American Minister, went in the chartered steamer Toeywan, flying the American flag, to claim a passage through the barrier and up to Tientsin, basing his claim on his position as a

[4] Cordier, *L'Expédition de Chine*, 1857–1858, pp. 411, 436, 457, 458; W. A. P. Martin, *A Cycle of Cathay*, pp. 183, 186; 48 *British and Foreign State Papers*, 47 *et seq.*

neutral, but unfortunately the steamer ran ashore before reaching the landing-place. Here the American Minister was informed that the Viceroy of Chihli, Hengfu, was at Peitang, ten miles up the coast, waiting to receive him there. On June 25, Mr. Bruce received a communication from the Viceroy, dated the 23rd, informing him that the writer was waiting to receive him at Peitang, which was to be dismantled of all defenses, and from which place the minister would be conducted to Peking. Unfortunately, this communication came too late, as the forces under Admiral Hope had at 10 o'clock in the morning already begun to remove the obstructions in the river; but in this undertaking, in which they were opposed by the fire of the Chinese forts, they suffered a total defeat.[5]

On the other hand, the American Minister, Mr. Ward, accepting the invitation of the Viceroy, proceeded to Peitang, where he was received with proper respect; and on July 20, with the members of his legation, he set out for Peking. When, on the 28th of July, he reached the capital, he found that General Ignatieff and his legation had arrived there and had exchanged the ratifications of the Russian treaty at the end of May. He was also informed that the kotow was essential to an audience with the Emperor, and being unwilling to concede this, he left Peking on the 12th of August for Peitang, where he exchanged the ratifications with Viceroy Hengfu on the 16th. In taking this course the American Minister acted in conformity with his instructions, his sole purpose being to effect the exchange of the ratifications of the treaty; and he had neither authority nor force to compel a passage by Taku. He also acted in conformity with the provisions of his own treaty, in which no place for the exchange was specified.[6]

On July 1, Admiral Hope informed Mr. Bruce that the means at his disposal were insufficient for removing the obstacles at the entry of the river, so the British and French envoys decided to return to Shanghai. But when the news of the disaster reached Europe, immediate steps were taken by the two Powers to restore their prestige in the Far East. Lord Elgin and Baron Gros were again appointed by their respective governments to represent England

[5] Cordier, *L'Expédition de Chine*, 1860, pp. 35–38, 55, 58; W. A. P. Martin, *A Cycle of Cathay*, pp. 190–194; J. W. Foster, *American Diplomacy in the Orient*, pp. 247–249; S. W. Williams, *Middle Kingdom*, vol. 2, pp. 665–668.

[6] J. W. Foster, *American Diplomacy in the Orient*, pp. 247–255; W. A. P. Martin, *A Cycle of Cathay*, pp. 195–200; *North-China Herald*, August 22, 1859.

and France, while a force of 10,000 British and 7,000 French was despatched to support them under the command, respectively, of Sir Hope Grant and General Montauban. Meanwhile, Sir F. Bruce addressed an ultimatum to the Senior Secretary of State, in which he demanded an immediate and unconditional acceptance of the following terms: (1) that an apology should be offered for the acts of the Chinese troops at Taku; (2) that the British Minister should go by way of the river in a British vessel to Tientsin, and thence to Peking, where the treaty of 1858 should be ratified without delay; (3) that full effect should be given to the provisions of the treaties, including the indemnity for the Canton delinquencies; (4) that the agreement arrived at by Lord Elgin and the Imperial plenipotentiaries in 1858, with regard to the non-residence of the British Minister at Peking, was at an end; and (5) that since the Peiho affair had entailed a considerable expense, the contribution which would be required from the Chinese government towards defraying the cost would be greater or less, according to the promptitude with which the demands above made should be satisfied in full by the Imperial Government. Thirty days were given for an answer to this despatch, and in case of none being forthcoming within that period, or the answer being unsatisfactory, the Chinese Government was warned that force would be employed. In the reply, the Chinese Government traversed the facts on which Sir F. Bruce had based his demands, graciously informing him that if he came to Peitang he would receive the ratification of his treaty. "But," it was added, "if you be resolved to bring up a number of war vessels, and if you persist in proceeding by way of Taku, it will show that your true purpose is not the exchange of treaties;" and it concluded thus: "The despatch written on this occasion is, in much of its language, too insubordinate and extravagant for the Council to discuss its proposition more than superficially. For the future the British Minister must not be so wanting in decorum." [7]

Such was the actual situation when Lord Elgin and Baron Gros reappeared on the scene. They finally decided to proceed with their combined forces for Peitang, where their war vessels anchored on July 26, 1860. On August 2, the troops began to land. The forts at Peitang were found to have been practically deserted, and were taken possession of without the firing of a shot. The forces

[7] Henri Cordier, *L'Expédition de Chine*, 1860, pp. 95–96, 158–162.

then advanced to Tangku, and having captured it, proceeded to Taku, which they in turn captured on August 21. The way was thus opened to Tientsin, whither Lord Elgin and Baron Gros proceeded with a strong escort of cavalry and infantry. As the allied forces were approaching Peking, the Emperor went to Jehol in Tartary, and on September 22 Prince Kung, the Emperor's brother wrote to the envoys that he was invested with full plenipotentiary powers to arrange peace. Early in October the allied forces came within sight of the capital, which lay at their mercy; but with "studied and judicious moderation," they demanded only the temporary surrender of the Anting Gate of the city. This demand was yielded on October 13, when the gate was under temporary military occupation of the allied forces. In the meantime negotiations had been carried on for the conclusion of conventions between Prince Kung and the allied envoys, and on October 24, 1860, Lord Elgin and Prince Kung signed and sealed that relating to England, while on the next day the French document received signature.[8]

The Convention of 1860 with Great Britain was thus signed at Peking. Article 1 expresses the regret of the Emperor at the misunderstanding occasioned by the obstruction offered by the garrison of Taku to the passage of the British envoy for the purpose of exchanging the ratifications of the Treaty of 1858. Article 2 gives the British diplomatic representative the right to reside permanently or occasionally at Peking according to his own decision. Article 3 provides for an indemnity of 8,000,000 taels, 2,000,000 taels to British merchants for their losses at Canton during the destruction of their property in 1857, and the remaining 6,000,000 for war expenses. Article 4 stipulates that "it is agreed that on the day of which this Convention is signed His Imperial Majesty the Emperor of China shall open the port of Tientsin to trade, and that it shall be thereafter competent to British subjects to reside and trade there under the same conditions as at any other port of China by Treaty open to trade." Article 5 provides that the high authorities of every province shall proclaim throughout their jurisdictions that Chinese choosing to take service in the British Colonies or other parts beyond the sea are at perfect liberty to enter into agreement with British subjects for that purpose, and to ship themselves and their

[8] Stanley Lane-Poole, *The Life of Sir Harry Parkes*, vol. 1, pp. 362–364; Henri Cordier, *L'Expédition de Chine*, 1860, pp. 299–391, 445.

families on board any British vessel at any of the open ports of China; and also that the high authorities shall, in concert with the British representative in China, frame such regulations for the protection of Chinese, emigrating as above, as the circumstances of the different open ports may demand.[9]

The Peking Convention between China and France was signed on October 25, 1860. Article 1 offers apology for the conduct of the Chinese military authorities at Taku. Article 2 provides for courteous treatment of the French envoy during his stay at Peking. Article 5 provides 1,000,000 taels as indemnity to be paid to French merchants for their losses sustained at Canton during the hostility of 1857, and it also provides 7,000,000 taels as an indemnity for war expenses. Article 6 provides for the restitution of French religious establishments, and also the right of French missionaries to rent and purchase land in the provinces and to erect buildings thereon. Article 7 in providing for the opening of Tientsin to trade say: "La ville et le port de Tientsin, dans la province de Petchéli, seront ouverts au commerce étranger, aux mêmes conditions que le sont les autres villes et ports de l'Empire où ce commerce est déjà permis, et cela, à dater du jour de la signature de la présente Convention, qui sera obligatoire pour les deux nations, sans qu'il soit nécessaire d'échanger les ratifications, et qui aura la même force et valeur que si elle était insérée mot à mot dans le Traité de Tientsin."[10]

While Great Britain and France which had borne the burden and heat of the day thus received satisfaction, General Ignatieff, the Russian Minister, was by no means inclined to forego the compensation to which as a friendly intermediary he considered himself entitled. He was so skillful in performing the part of an *amicus curiæ* that he succeeded in leaving the impression on the mind of Prince Kung that it was due to his interposition that Peking was saved from destruction when the allied forces were approaching to the Capital. Prince Kung, in rewarding him for his friendly mediation, concluded with him the Treaty of November 14, 1860. By

[9] 50 *British and Foreign State Papers*, 10 *et seq.*

[10] The city and the port of Tientsin, in the Province of Chili, are opened to foreign commerce under the same conditions as the other cities and ports which are already opened to foreign trade, and that this obligation of the two nations shall begin on the signing of this convention, without waiting for the exchange of the ratification, and this shall have the same force and effect as if it were inserted in the Treaty of Tientsin. (51 *British and Foreign State Papers*, 668 *et seq.*)

the first three articles of this treaty the territory between the River Usuri and the sea was ceded to Russia, or in other words Russia acquired a coast-line extending for seven hundred miles by a stroke of the pen. Article 8 provides for the mutual protection of merchants, the establishment of consular buildings, and it also defines the relation of consuls with local authorities. It provides also the consular jurisdiction for civil cases, and it provides for the extradition of criminals and their punishment. Article 10 provides for the punishment of criminals according to the laws of their own country and the extradition of fugitives. By Article 6 Kashgar was opened to trade and it read: "A titre d'essai, le commerce est ouvert à Kachgar, sur les mêmes bases qu'à Ili et à Tarbagatai. A Kachgar, le Gouvernement Chinois cède un terrain suffisant pour la construction d'une factorerie avec tous les édifices nécessaires, tels que maisons d'habitation, magasins pour le dépôt des marchandises, église, etc., ainsi qu'un terrain pour le cimetière, et un pâturage, comme à Ili et à Tarbagatai. Les ordres seront donnés immédiatement au Gouverneur du pays de Kachgar pour la concession des dits terrains. Le Gouvernement Chinois ne répond pas du pillage des marchands Russes commerçant à Kachgar, dans le case où ce pillage aurait été commis par des gens venus d'au-delà des lignes des postes de garde Chinois." [11]

[11] As an experiment, Kachgar is opened to commerce on the same basis as Ili and Tarbagatai. At Kachgar, as at Ili and Tarbagatai, the Chinese Government is to give territory sufficient for the construction of a factory with all the necessary buildings, such as residences, warehouses for the storage of merchandise, church, etc., as well as territory for the cemetery, and a pasture ground. Orders on the above terms are to be immediately issued to the Governor of Kachgar. The Chinese Government is not responsible for the plunder of Russian merchandise at Kachgar, in case the plunder is committed by people from beyond the boundary defended by the Chinese Guard. (53 *British and Foreign State Papers*, 970 *et seq.*; H. Cordier, *L'Expédition de Chine*, 1860, pp. 407–451.)

Chapter IV

Treaty Ports in Formosa[1]

The first step in opening the island of Formosa to foreign trade was taken up by the diplomatic representatives of America and Russia, Mr. Reed and Count Putiatine, who in 1858 were successful in inducing the Chinese Government to declare Taiwan open to foreign trade and residence. Subsequently, other ports were opened by the English and French treaties signed in 1858 and ratified in 1860. By Article 11 of the English treaty the ports of Newchwang, Tangchow (Cheefoo), Taiwan (of Formosa), Chao-chow (Swatow), and Kiungchow (Hainan) were declared to be open to foreign trade. While by Article 6 of the French treaty there was added to these the Formosan port of Tamsui. In 1861 Kelung was added with the consent of the Chinese Government as a dependent port of Tamsui, and three years later the British obtained the recognition of Takow as a dependent port of Taiwan. Robert Swinhoe, the first consular representative to visit Formosa, was in December, 1860, nominated by the British Government as Vice-consul at Taiwan, and Geo. C. Braune as assistant. In July, 1861, Mr. Swinhoe arrived at Takow, having been conveyed from Amoy aboard the British gunboat *Cockchafer*. He and his staff travelled overland from Takow to Taiwanfu, and on arriving at the capital they were installed by the authorities in the temple outside the city walls, close to the canal.

The neighborhood of the temple, however, proved to be an unruly one, and the foreigners were pestered by crowds of the people who were not always polite in satisfying their curiosity. Mr. Swinhoe was obliged to ask assistance from the local authorities to disperse the mobs, who were becoming very disagreeable. But to the dismay of the Consul, an officer returned with the information that the Chinese local authorities were quite unable to drive away the crowds.

[1] Most of the material on this chapter is based upon the following works: *North-China Herald; Peking Gazette;* E. H. House, *The Japanese Expedition to Formosa*, 1874; John Dodd, *Journal of a Blockaded Resident in North Formosa*, 1884; *Reports of the Imperial Chinese Maritime Customs*, 1866–1896 (Shanghai); D. Reiss, *Geschichte der Insel Formosa*, pp. 407–447.

Under these circumstances, Mr. Swinhoe considered that quarters within the wall would be more pleasant, so he accepted an invitation to spend his first night at a well-to-do Chinese merchant's residence within the walls. Later he secured a comfortable residence there, where he remained throughout his stay in Taiwanfu.

By 1860 Taiwanfu declined in importance as a port, and as Tamsui offered greater commercial possibilities, so the consulate was transferred to the port of Tamsui in the middle of December, 1861. The Consular Notification says:

> Owing to the greater advantages offered by the harbor of Tamsui above all others in the island of Formosa, the undersigned (British Consul) has removed his establishment thither from Taiwanfu, and Tamsui therefore will henceforth be recognized as the Consular Port opened to British trade in Formosa. The limits of the harbor are defined by the bar at the mouth of the river to seaward and the gorge some four miles up the river to landward.

Although the treaty port was at Hobe, the port of Tamsui district, the trade was found to be all conducted at Banka, a city adjoining Twatutia on the north, and some eleven miles from the port. Consequently, the English acting-consul at Tamsui succeeded in gaining possession from the Chinese authorities to extend the boundaries of the treaty port of Tamsui so as to include Banka. The British Consul at Tamsui gave this notification on July 7, 1862: "This is to give notice to all whom it may concern that the limits of this port are extended up the river to include the town of Banka."

The Chinese Maritime Customs began operations at Tamsui in 1863. The first commissioner was Mr. Howell, an Englishman, and his successor was Mr. Schenck, nephew of Admiral Schenck of the United States Navy. Vessels trading with Takow were obliged to proceed to either Amoy, Foochow, or Tamsui to have their cargoes assessed before they could go to Takow to discharge, two tidewaiters being established at the later port to guard against smuggling. In a similar manner, vessels leaving Takow were obliged to make use of one of the above-mentioned ports before they were allowed to proceed to their several destinations. But this great hindrance was done away with, when Mr. William Maxwell opened the Customs at Takow on May 5, 1864, as the first Customs Commissioner, and established his office on board the opium receiving hulk *Pathfinder*.

But the trade in the south was rapidly improving, and the trade of Takow and Taiwanfu was already double that of Tamsui. Con-

sequently, the Vice-consul, who had encountered considerable difficulty in communicating with the Chinese officials at Taiwanfu, reestablished his consular office in the South. Mr. Geo. C. P. Braune was left in charge of the consular office in the North, which was continued as an agency of the South, and in 1865 a British consular office was opened at Taiwanfu, under the charge of Mr. Thomas Watters.

Life both on land and sea was not without hardship and danger in those days. On shore the natives frequently gave exhibitions of their hostility to foreigners, and on the unlighted, and we may say uncharted, coasts of the island, numerous pirates hovered. These, if they could not capture the speedy foreign craft on the open seas, frequently joined with the natives on shore in pillaging any vessels that were unfortunate enough to be wrecked. Formosa was indeed notorious for wrecks, and escape from the pirates and other wreckers was quite exceptional for any vessel that happened to be cast on the coast out of sight of the principal ports.

While the opening of Formosan ports to foreign trade had been secured by treaty, yet the recognition of the rights and privileges embodied in them was not gained without some struggle. The mandarins watched with concern the increasing prosperity of the foreigners, and endeavored by every means possible to check foreign trade. The local officials had strongly opposed the establishment of the Customs service in charge of foreigners, depriving them as it did of the many and varied squeezes which they had before imposed at their pleasure. Mast dues were a common form of extortion which had always been enforced on junks and foreign vessels, and it was a great disappointment to the officials to find that, after the establishment of the Customs, foreign ships would be exempt from these dues. They consequently endeavored to avenge the loss of the $40 mast dues by placing every possible obstacle in way of foreign trade. A favorite method was occasionally to declare an embargo upon the export of rice, thus depriving foreign ships of cargo which they expected. Frequent friction resulted between the British Consul and the Commissioner of Customs—the latter, acting as he did under instructions, refusing to grant an export permit to foreigners shipping rice. In 1866, when Mr. White, the Commissioner, refused to grant an export permit to Messrs. MacPhail & Co. to ship rice from Taiwanfu to Amoy in their schooner *Pearl*,

the British acting Consul, Mr. Watters, disposed of the difficulty, and himself gave permission to the ship to leave without the usual customs clearance, on the owners giving the guarantee required by the treaty. The *Pearl* left Takow on the 9th of June, but was lost on her way to Amoy with all her cargo and all hands except one. An American schooner, the *Tenlee*, was the next vessel similarly despatched. Meanwhile, Chinese vessels were almost daily exporting rice without any opposition. In September of the same year a pass was obtained, not, however, without considerable difficulty, by Messrs. MacPhail & Co. and they exported under it a considerable quantity of rice to Amoy.

The difficulties between the local government and the few foreign residents, which had continued from the first year of the establishment of the Customs, became more numerous and irritating towards the close of the sixties, and in 1868 the climax was reached. In southern Formosa, British Consular Reports (British Blue Book, 1869, China No. 3) inform us that the more vexatious of the difficulties began in April of that year, when $6,000 worth of camphor, the property of Ellis & Co., was seized at Goche. This was followed by a vigorous protest against the seizure on the ground that camphor was bought consistently with the terms of the treaty, which expressly stipulated that camphor was one of the articles of legal trade.

The United States gunboat *Aroostook* was then visiting the southern portion of Formosa, and General Le Gendre, the American Consul at Amoy, who was on board, joined Mr. Jamieson, the acting British Consul at Takow, in a visit to the Taotai at his Yamen in Taiwanfu to remonstrate with him on the action of his subordinates in the North. There was not much gained by this, the Taotai claiming control of all camphor in the island, and denying the right of any one to trade in it without his special permission. He, however, came to a distinct agreement with the two Consuls that the camphor in question should be returned or a money indemnity paid instead.

During this year assaults were committed on several British subjects in Formosa. The British Consul demanded of the Taotai that the assailants be punished, and after some difficulties, the Taotai promised that justice should be done. On September 2 the British Consul, believing that this promise had not been fulfilled, informed

the Pitow magistrate that he would pay him a visit. But he was warned not to come, for the reason, as the magistrate stated, that the Taotai had not given any orders regarding criminals, that the magistrate consequently had nothing to discuss with him, and that the people would be much enraged by his presence.

Soon afterwards, the Amoy Taotai, who had been detailed by the Government at Foochow to go to Formosa and settle the questions in dispute, arrived; but as he was without any definite powers to remove any of the offending officers, his visit produced no beneficial result.

On the 20th of November, the British Consul started from Takow with H.M.S. *Algerine* and *Bustard* for Anping with the determination of taking military possession of the Fort of Zelandia and the ramparts of the village of Anping, not only as a material guarantee in the shape of a reprisal, but as a basis for action, Anping being the key to the capital at Taiwan. The reconnoitering party at once took possession of the fort and the ramparts of the village, but, as the fort was not only ruined but was also within range of the gunboat's guns, the landing force was reembarked and a proclamation was published to the effect that the village of Anping and Fort Zelandia were held by the British forces and that no other military or naval forces would be allowed to enter those places.

On the 22nd the British Consul returned to Takow and the demands were granted by the Taotai of Amoy after a great deal of argument. The removal of the Taotai of Taiwan, of the magistrate of Pitow, of the Ting of Lokang, was to be effected by the Amoy Taotai taking his steamer to Foochow, and there obtaining immediate dismissal of the offenders by the Viceroy. Among the terms of the settlement of this dispute it was provided that the British gunboat should hold military possession of Anping until the offending Chinese officers had been removed. But the Formosan authorities in spite of this settlement began to reoccupy Anping and the fort soon after the departure of the Amoy Taotai on the 25th. Lieutenant Gurdon, the British military commander, then sent a letter to the Chinese military authority informing them that they must send the troops out of the town and cease mounting guns on the fortifications. As no answer was received, the British military forces actually occupied the territory. On the next day a deputation of the chief merchants of Taiwanfu came tc arrange a truce

with the British military authorities, and agreed immediately to pay over the sum of $40,000 as a guarantee that all the demands would be fulfilled. This sum was to be returned only after the agreement was ratified by the Provincial Government of Fukien. These conditions were complied with, hostilities for the time being ceased, and the disputes were eventually settled. The British forces left Anping on December 2, 1868.

The following were the substantial results obtained by the British Consul: (1) The camphor monopoly was abolished and proclamations were issued declaring the right of foreigners and their employees to go and buy freely. (2) Passports were to be issued by the Taotai on application to merchants and others to travel for business or pleasure within the island of Taiwan. (3) An indemnity of $6,000 was paid Elles & Co. for the loss of camphor. (4) An indemnity of $1,167 was paid to the Protestant Mission for loss of property. (5) A payment was made of all claims of Elles & Co.'s compradore for the loss of property. (6) Liang Taotai, the Pitow District Magistrate, and the Lokang Ting were all removed; and the various criminals connected with the various outrages were punished to the satisfaction of the Consul. (7) Proclamations were issued acknowledging the injustice of the slanders hitherto circulated against Christianity and Christians, and protecting them thoroughly against a renewal of such. (8) The right of residence and of work by missionaries in the island was recognized.

While the clouds were gathering over the South, Tamsui in the North was in the midst of a storm. The hatred towards foreigners, which since the opening of the port had been gradually increasing, had now with sympathetic encouragement from some of the mandarins assumed such proportions that British Acting Vice-Consul Holt wrote a despatch to Peking dated October 14, 1848, stating that "the situation was so serious that he might be driven at any time to haul down his flag. Remonstrances, expostulations, despatches, letters, messages, and visits have" he said "alike failed in insuring common justice; and our very lives are threatened by people whose recent course of action has been so atrocious as to prove that the will is not wanting to murder us."

As yet no foreigners were established up river from Tamsui, and the Chinese were determined that they should not be. Messrs. Dodd & Co., a British trading company, were the first firm to make

the attempt, and it was this that caused the trouble in the North. They leased a hong in Banka as a first step in expanding their business. But on attempting to take possession of this lease, Mr. Crawford D. Kerr, manager of the firm, accompanied by Mr. S. Godfrey Bird, a member of the firm, were both wounded by a mob, which was threatening to attack the foreign hong. As a consequence of this attack, all up-river business in which the foreigners were concerned now necessarily came to a standstill.

The situation became so perilous that Mr. Holt despatched a boat to Foochow asking for immediate assistance. Several days later the United States gunboat *Aroostook* arrived to look after American interests, and the British gunboat *Janus* followed a few hours later.

A settlement of the dispute was then effected. The following demands, made by the British consular officer, were granted: (1) Four of the principal ring-leaders in the attack on the two foreigners were kept in cangues and exposed for one month in front of the Yamen; (2) proclamations were issued by the Tamsui Ting, one of which was cut in stone and put up in one of the public streets, instructing the people to be on friendly terms with the foreigners; (3) all property destroyed or stolen was made good; (4) the hostile clan was fined $1,000 for the attack.

The next troublesome episode was the friction with the Japanese authorities which resulted in the Japanese Expedition of 1874.[2] The cause of this difficulty was a shipwreck. In the month of December, 1871, a large fishing and trading vessel belonging to one of the islands of the Miyako group of the Loochoos was wrecked on the southern coast of Formosa. Fifty-four of the crew were murdered, and only a few survivors were eventually able to return to their homes, and through them the news of the crime was made known to the highest authorities with whom they were acquainted. On hearing this, the Loochooans sent a commission to Japan in 1872 asking for protection. In return for this 'valuable' protection, it was agreed that their territory was henceforth to be considered as belonging properly to the Japanese Empire. Japan, consequently, planned an expedition, which was placed under Okuma Shigenobu, of the Imperial Council, as commander-in-chief. In this expedition, which set sail from Shinagawa in April, 1874, many

[2] H. Cordier, *Histoire des relations de la Chine avec les puissances occidentales*, 1860–1900, vol. i, pp. 530–535.

Americans were employed. On this ground the Viceroy of Fukien addressed to the American Consul, Henderson, which with the omission of a few lines of courteous greeting, reads:[3]

Now we have investigated this Formosan business, as well as the statements of the Taotai of Formosa and the captain of the Yang-wa, to the effect that this expedition to the savages of Formosa has been planned by the former American Consul at Amoy, Le Gendre; also one Cassel, and many others assisting. We have also examined and found that Formosa has long belonged to China, and the savages are certainly under Chinese jurisdiction, and other nations have nothing to do with them. On this occasion Japan has sent soldiers to punish the savages without previous consultation with the Foreign Office, and the Japanese commander-in-chief, without awaiting a communication from me, on his own motion took soldiers and formed a camp at Liang-kiau, in entire violation both of International Law and the Treaty between China and Japan. We twice sent communications to the Board of Trade to be presented to your honorable self, to be examined and acted on; all of which are on file. We have received your despatch, in which you show your desire to carry out treaty obligations, and in settling matters, to preserve lasting peace and friendship, as well as your purpose to perform your duties; for all which we desire to express our hearty thanks. We have appointed Shen, second in the Board of Trade, and formerly acting prefect of Foochow, to go to Amoy, and also have sent a communication to Li, Admiral at Amoy, telling him to await the coming of Shen, and then with him to have a consultation with the United States Consul, and together concert some plan of action. And in accordance with the provisions of Article 1 of the Treaty of the First Year of Hienfung (1858), that the two countries shall mutually assist in preserving friendly relations, we ask your honorable self to request the commander to take his soldiers back to Japan. And if in the vessels that have gone to Formosa there are American citizens aiding the Japanese, we ask you to punish those that are acting improperly, whether on land or sea, in accordance with the 11th Article of the Treaty and the laws of your country. From the time when your honorable self arrived in China, you have always managed affairs in strict accordance with right, so that the streets are full of praises of yourself by rulers and people, and ourselves are truly thankful. Now that there are affairs in Formosa, over which you are Consul, you can show your friendly feelings by acting in accordance with the Treaty, and by taking measures in connection with Admiral Li and Prefect Shen. Thus can you show friendly feeling. We have sent a communication to Admiral Li, and also one to Prefect Shen ordering them to go to Amoy and arrange the whole affair with you, for which purpose we give them full powers. And we request you to act with these two, not

[3] James W. Davidson's *The Island of Formosa*, p. 157.

only as officials but (also) as friends. Hoping thus, with best regards, etc., etc., etc.

When the American Consul and the two Chinese officials met at Amoy, they agreed that notifications must be sent to Formosa to warn the American citizens not to violate the law of neutrality. The latter in reply undertook to justify their action by an explanation of the condition of affairs, declared that they had no intention of assisting in warlike operations and promised to withdraw in the event of war with China.

On the 10th of September, Okubo Toshimitsu, an eminent Japanese Minister, came to Peking to settle the dispute; and on October 31 a preliminary agreement was signed and sealed at the office of the Tsungli Yamen. This agreement, after reciting in the preamble that, as the subjects of every nation must be protected from injury, every nation might take efficient measures for the security of its subjects; that, if anything injurious happened within the limits of any state, the latter should undertake the duty of reparation, and that the Japanese troops sent to Formosa to inflict punishment on the aborigines for outrages committed upon Japanese subjects, would be withdrawn, China assuming the responsibility of measures for the future, declared (Article 1) that "the present enterprise of Japan is a just and rightful proceeding, to protect her own subjects," and that China "does not designate it as a wrong action"; that (Article II) a sum of money should be given by China for the relief of the families of the shipwrecked Japanese subjects that were maltreated, and for the roads and houses that Japan had constructed in Formosa during the military occupation, the amount to be determined by a special document; and that (Article III), in order to prevent any future misunderstanding, all the official correspondence on the subject exchanged between the two states should be mutually returned and annulled. As to the savages, China engaged to establish her authority, and promised that navigators shall be protected from injury by them.

Mr. Wade, the British Minister at Peking, offered his good office to the representatives of the two countries for the final settlement of the dispute. This settlement, as ultimately reached, was as follows: China agreed (1) to pay the sum of one hundred thousand taels for the relief of the families of the Japanese subjects who were

murdered, and (2) after Japan should have withdrawn her troops, to retain for her own use all the roads they had repaired and all the houses they had built, paying therefor the sum of four hundred thousand taels as recompense. Japan was to withdraw all her troops, and China was to pay the whole amount, without fail by the 20th of December; but in case the Japanese troops had not then been withdrawn, the payment of the money was not to be obligatory.[4] In reality, the entire amount was paid by China before December 1, and General Saigo, having previously received orders by a special messenger of rank, took leave of Formosa with his whole force on December 3, more than two weeks before the stipulated time.

In 1877, relations between the Spanish Government and the Chinese authorities in Formosa eventually became strained over a controversy in regard to the Spanish vessel, *Soberana*, which was wrecked and plundered by the Formosan natives in the year 1863. It seems that after fourteen years of fruitless negotiation, the Spanish Government at last determined to resort to the old 'gunboat policy', which had so often been successfully used by Europeans in exacting satisfaction from the Chinese authorities. The Chinese authorities, not unaccustomed to deal with demands presented in this way, promptly paid over, upon the appearance of the Spanish Admiral, the sum of 18,000 Spanish dollars, which was sent to Madrid and distributed among the survivors and the families of those who perished by the loss of the vessel.

It was at the close of the Franco-Chinese War of reprisals in 1884, that Formosa, while taking no part in the main controversy itself, was seized as a material guarantee for the payment of an indemnity which France had imposed upon the Chinese Government. On August 4, the French iron-clad *La Galissonière*, bearing the flag of Admiral Lespes, and two other French men-of-war, anchored in the port of Kelung. The Admiral demanded the surrender of the forts guarding the harbor, declaring that, if this demand was not complied with, he would open fire on the forts at 8 o'clock the following morning. On the refusal of the Chinese to surrender the place, the French gunners commenced operations precisely at the hour announced. The fortifications were destroyed and the French took possession of the city. In the next few days two more French men-of-war arrived, making the total five in all.

[4] James W. Davidson, *The Island of Formosa*, pp. 164 *et seq.*

The British Consul, Frater, having received advices from the French Admiral, issued a circular on the 11th inst., stating that foreigners residing at Kelung did so at their own risk. The Customs were, however, reopened a few days later with Mr. Brownlow in charge, and it appeared that neither the French nor the Chinese were interfering with the trade. By the end of August, the French had succeeded in holding the shore line at Kelung, but were unable to advance beyond it; and as Chinese soldiers had for some days been erecting earthworks and digging entrenchments on the hills on the east side of the bay overlooking the shipping, the French sent word ashore for the Europeans to come on board the *Bayard*, as they intended opening fire on the earthworks which were now just visible. The firing was unsuccessful for several days, and this condition of affairs continued through September, the French having gained only the summits of the near hills surrounding the harbor.

The French fleet under Admiral Courbet arrived off the port of Hobe, October 1, and gave notice that the forts would be bombarded the next day. At this time all the foreigners were gathered together at Tamsui, and it was the general opinion among them that the French forces would find Tamsui in their possession in the early part of the next day. As early as seven the firing began, and the bombardment continued until 8 p. m., after an assault of thirteen hours. It was estimated that the French fleet engaged in the bombardment of Tamsui must have fired about 2,000 rounds of ammunition. No further progress was made till the beginning of the new year, when the French showed much activity in amassing troops at Kelung. On the 3rd of March, they stormed Fort Bamboo, an event by which the Chinese authorities were greatly alarmed.

Nothing of special importance subsequently occurred, however, until the 9th of June, when the treaty between China and France was signed by which (Article 9) it was stipulated that Formosa and the Pescadores Islands should be evacuated. The news of this treaty soon reached Formosa, and on June 21 the French forces departed from Kelung. Thus, after an occupation of Formosa for more than nine months, the French operations in the island came to an end.[5]

Previously to the French War, Formosa was but a prefecture of Fukien Province, but the Japanese Expedition of 1874 and the

[5] John Dodd, *Journal of a Blockaded Resident in North Formosa during the Franco-Chinese War*, 1884–1885.

hostilities with France suggested to the Peking authorities that the island had a strategic value which caused it to be coveted by ambitious powers, and that it could be preserved as a Chinese possession only by making radical changes in its political and military government. Therefore, in 1887, the island was declared by Imperial Decree to be an independent province, and the Imperial Commissioner Liu Ming-chuan was appointed as the first governor. The Customs service, which had formerly been under the superintendence of the Tartar General of Foochow, was, from the first of December, 1887, placed under the local governor.

Beginning with this reform, a thorough reorganization and redivision of the island was necessary. In former days, the prefecture of Formosa comprised four districts and three sub-prefectures. Now the island became a province with four prefectures (Taipeh, Taiwan, Tainan, and Taitung), eleven districts, and three sub-prefectures. As a result of these changes and additions, the seat of the government, which had been formerly at the old town of Taiwanfu in the South—which city had been in turn the capital of the Dutch, Koxinga, and the Chinese—was now removed temporarily to the new city of Taipeh. Consequently, the big southern city no longer remained the capital of the island, and was therefore not entitled to bear the name Taiwan (Formosa), but became instead, merely the capital or fu of the single prefecture of Tainan. It was, therefore, renamed Tainanfu. In this new capital streets were rearranged and paved with stone. Electricity was used for lighting purposes; and this is believed to be the first instance of the official adoption of electricity in any part of the Chinese Empire. Then there was a change in the means of inland communication, as a cable steamer, the Feichen, was purchased, and in October, 1887, the laying of a cable from Anping to Dome Bay in the Pescadores was completed. Following this, other telegraphic lines were made, and in 1888 a cable line from Sharp Peak at the mouth of the Min River in Fukien to Tamsui was completed, thus connecting it with the mainland.

The progressive spirit of Liu Ming-chuan did not end here, as he decided that Formosa should have a railway system, although no railway had yet been constructed by officials in the Chinese Empire. He determined to improve the harbor of Kelung for the facility of international trade, and also to construct a railway from the North to the South, so that he could convert Kelung into a shipping port,

to the great advantage of peace and commerce. To obtain Imperial sanction for this undertaking, he represented to the authorities that, if the capital was removed into the interior as they had recommended, it would be necessary, as there were no roads, to construct a railway from the new capital to one of the coast ports, preferably Kelung in the North. This proposition met with some opposition in Peking, but eventually Imperial approbation was obtained. Early in March, 1887, the work was begun, and it was completed to Kelung in October, 1891. Up to the retirement of Liu Ming-chuan in 1891, the progressive changes and reforms succeeded in increasing the commercial activities of Formosa. But, after his retirement, Shao Yu-lien, his successor in the governorship, although he appeared to be enterprising and liberal-minded, took no steps to carry out the important reforms which his predecessor had planned. Shao held his office until October 21, 1894, when he gave over charge of the island to Treasurer Tang Ching-sung, who became acting-governor and was the last officer under the Chinese régime to hold this position.

In the summer, 1894, war broke out between China and Japan, but in the following spring, hostilities came to an end. Some months before the signing of the Treaty of Peace between the two nations, the island of Formosa came into the range of possibilities as a future possession of Japan. The Eastern press, usually alert, had on this subject but little to say. And so well had the Japanese succeeded in keeping secret their designs that, even up to the departure of the transports for the Pescadores, the newspapers were filled with matter pertaining to the march on Peking, with scarcely a reference to Formosa. The April telegraphic news of the attack on Li Hung-chang, followed by the declaration of an armistice for twenty-one days, was good news, and relieved the anxiety of the people for the time. However, later details to the effect that the armistice did not include Formosa caused a great shock to the whole populace. It was quite reasonable to believe that, if the Japanese had demanded the insertion of this condition, it was not without some purpose, and of this there could be but one explanation: the seizure of Formosa by force.

On March 20, after a five days' trip from Sasebo naval station, the expedition arrived off the Pescadores. But the stormy weather on the 21st and 22nd prevented an immediate attack, so that bom-

bardment did not begin until the 23rd. On the 26th inst., the Japanese succeeded in forcing the Chinese garrison to surrender, and thus the Pescadores fell into the hands of the Japanese forces. The Japanese then advanced to attack Formosa. The excitement in the island was very great, and the danger of local disturbance and mob violence seemed to be increasing day by day. During the last days of April, the situation became so alarming that the Governor called a meeting of the Consuls and informed them that he had lost all control over his people, including the soldiers; that, unless Foreign Powers intervened, or sufficient foreign protection was provided, as soon as it was officially known that the treaty ceding Formosa to Japan had been ratified, Formosa would be thrown into a state of anarchy and rebellion; and that he was unable to protect the lives and interests of foreigners on the island. Later events proved that he had told the truth.

On April 26, H.M.S. *Spartan* arrived, followed by the battleship *Centurion* with the British Admiral on board. Following this, war vessels of the other nations came to protect the foreign lives and interests in the island.

During the early half of May the atmosphere was thick with rows and riots. Scarcely a day passed without news of some disturbance in the island. These were confined to the Chinese, the soldiers being usually the offenders and the villagers the victims.

The negotiations for peace took place at Shimonoseki, Japan, and the first meeting with Count Ito and Viscount Mutsu, the Japanese plenipotentiaries, was on March 20. The report of the conferences was published by an English journal, the *Peking and Tientsin Times*, and the discussions between the Chinese and Japanese plenipotentiaries as given in this journal are said to be correct. Such portions as refer to Formosa are herewith reproduced:

The subject of ceding Formosa to Japan was not discussed until the third conference. Then Count Ito remarked in a casual sort of way, "Our forces have now gone to Formosa; I don't know what sort of people they are in the island." "Colonists from Kwangtung," said the Viceroy (Li Hung-chang), "and very turbulent they are." Count Ito: "Some savages are still left?" The Viceroy: "The savages occupy three-tenths, the colonists the remaining. To continue the subject, since the Minister has introduced the Formosan question, I presume the wish to occupy it accounts for the unwillingness to grant an armistice. It will not be very palatable to Great Britain, and when

I spoke of the possibilities of clashing with the interests of other powers, I had this in my mind. What if we lose it?" Count Ito: "An injury to China is not an injury to Great Britain." The Viceroy: "Formosa and Hongkong are very near each other." Count Ito: "War between two Powers does no injury to a third." The Viceroy: "Great Britain is said to be unwilling that any other Power should occupy Formosa." Count Ito: "If China were to present Formosa to any Power, I fancy it would be received smilingly enough." The Viceroy: "Formosa having been ranked among the provinces cannot be given to any Power" . . .

The subject of Formosa was again brought up towards the close of the fourth conference, held on the 10th of April, by the Viceroy stating that he could not give up Formosa. "In that case, I must take it," said the Count. . .

During the fifth conference held on April 15th, the cession of Formosa was again referred to. With both Liaotung Peninsula and Formosa in view, the Viceroy complained that the territory Japan asked for was too large, and had great possibilities; but Count Ito said that whatever resources existed in the new territory had to be developed, and could not be regarded as a set-off to the indemnity. Besides as any wealth that might accrue would be spent in the territory, there would be no surplus . . . "Again there is the expense of development," said the Count. "The greater the expenditure," said the Viceroy, "the greater the return. Since in the future the gain will be so solid, what can stand in the way of a slight reduction? In that case it would be easier for China to borrow the requisite amount. When I was in Peking, some foreigners were ready to lend twenty millions sterling on the security of Formosa . . . So much having been offered with the island as a pledge, naturally it could have been sold for much more." Count Ito refused to talk over, though the Viceroy begged again and again for only a little concession in either money or territory.

The discussion now passed to the question of the position of Chinese landholders in the territory ceded to Japan, and the Viceroy asked that absentee proprietors might be confirmed in the possession of their property as securely as Japanese subjects. Count Ito pointed out that this was difficult, as aliens cannot possess real property in Japan. The Viceroy said that he referred to land which had been handed down from father to son for generations, but Count Ito explained that "if Japan allows Chinese to own real property in the interior, then Foreign Powers will certainly avail themselves of the most favored nation clause to put obstacles in our way" . . . Then a long discussion took place as to the time within which Formosa was to be handed over, the Viceroy proposing that the cession should be completed in six months after the exchange of ratifications. Count Ito would not hear of six months, and proposed that officials be sent to effect the transfer immediately after the exchange of ratifications . . . After some more discussion as to the date of the transfer, Count Ito had a clause drawn up to the effect that within a

month after the exchange of ratifications the two countries should send High Commissioners to arrange the transfer . . . The Viceroy: "Everything is in a state of confusion. Two months would allow things to become comparatively settled. Why be in such a hurry about Formosa when it is actually in your mouth?" Count Ito: "We have not swallowed it yet, and we are very hungry." The Viceroy: "Two hundred millions are enough to appease your appetite for a time. After the exchange of ratifications it will be necessary to memorialize the Throne to send commissioners, and a month is too little." . . . At last after bandying the matter for some time to and fro the clause as it appears in the treaty was agreed to: "Each of the two governments shall, immediately upon the exchange of the ratifications of the present Act, send one or more commissioners to Formosa to effect a final transfer of that province, and within the space of two months after the exchange of the ratifications of this Act, such transfer shall be completed." And after all, there is good reason to believe that, but for the firmness of Mr. Foster, the American adviser, the Chinese would have tried to evade this clause of the treaty.

The fifth conference was the last, Count Ito declaring that the demands both for indemnity and the cession of territory being final, so they were no longer open to discussion. The treaty was accordingly signed on the 17th, three days before the expiration of the armistice, and ratified at Chefoo, China, on May 8, 1895.

No doubt the higher officials of the island were informed of the signing of the treaty at Shimonoseki soon after it occurred; but to the people in general nothing was known further than that the cession of the island to Japan was very probable. To protest against this, a commission, consisting of a number of prominent residents backed by all the censors, board secretaries, and literati hailing from Formosa and Fukien provinces, visited Peking and presented a number of memorials to the Emperor, praying that the island should not be ceded to Japan.

Just previous to the declaration of independence by the literati of Formosa, a memorial consisting of sixteen characters was telegraphed to the Emperor at Peking by the provincial government of the island. It ran as follows: "The literati and people of Formosa are determined to resist subjection to Japan. Hence they have declared themselves an independent Island Republic, at the same time recognizing the suzerainty of the Sacred Tsing dynasty."

On the 23rd of May, the new government was announced as organized, and the declaration, of which a translation follows, was widely published:

OFFICIAL DECLARATION OF INDEPENDENCE OF THE REPUBLIC OF FORMOSA

The Japanese have affronted China, by annexing our territory of Formosa, and the supplications of us, the people of Formosa, at the portals of the Throne have been made in vain. We now learn that the Japanese slaves are about to arrive.

If we suffer this, the land of our hearths and homes will become the land of savages and barbarians, but if we do not suffer it, our comparative weakness will certainly not endure long. Frequent conferences have been held with the Foreign Powers, who all aver that the people of Formosa must establish their independence before the Powers will assist them.

Now therefore, we, the People of Formosa, are irrevocably resolved to die before we will serve the enemy. And we have in Council determined to convert the whole island of Formosa into a Republican State, and that the administration of all our State affairs shall be organized and carried on by the deliberations and decisions of officers publicly elected by us the People. But as in this enterprise there is needed, as well as for the resistance of Japanese aggression as for the organization of the new administration, a man to have chief control, in whom authority shall center, and by whom the peace of our homesteads shall be assured—therefore, in view of the respect and admiration in which we have long held the Governor and Commander-in-Chief, Tang Ching-sung, we have in Council determined to raise him to the position of President of the Republic.

An official seal has been cut out, and on the second day of fifth moon, at the ssu hour, (9 a. m., May 25th), it will be publicly presented with all respect by the notables and people of the whole of Formosa. At early dawn on that day, all of us, notables and people, farmers and merchants, artisans and tradesmen, must assemble at the Tuan Fang Meeting House, that we may in grave and solemn manner inaugurate this undertaking.

Let there be neither delay nor mistake. A Declaration of the whole of Formosa.

(*Seal in red as follows*) AN ANNOUNCEMENT BY THE WHOLE OF FORMOSA.

On May 25th, when the independence of the Republic was formally declared, two Japanese men-of-war arrived before Formosa. These two vessels, the *Naniwa* and *Takachiho*, had come on in advance of Admiral Kabayama's party, who were to follow in a few days to take possession of the island. Following this the Japanese fleet and transports arrived at Formosa on the 26th of May, and landing at Samtiao roadstead began on the 29th. From this time on the Japanese advanced toward the capital and the revolution was crushed after the middle of June.

Although up to June 1 the Japanese for three days had their forces on shore, the final transfer of Formosa was yet to take place. Lord Li Ching-fang, the son of Li Hung-chang, had been deputed as Imperial Commissioner to hand over the island. Li did not regard this as a desirable task, quite understanding that the further he and his illustrious father kept away from the new-born republic the better for them both. Li Hung-chang had accordingly memorialized the Throne in respect of the unsuitability of the appointment, and also of his own inability to be present, on account of sickness. The anti-Li faction, however, was too strong, and his excuses were not accepted. Lord Li then applied to the Shanghai Taotai for a force of one hundred foreign drilled men as a body-guard, but he was likewise unsuccessful even in this. Li Ching-fang, now greatly disturbed, made overtures to the Japanese that they should first suppress the revolution before he formally handed over the island. Without taking into consideration this rather curious request, the Japanese appreciated the embarrassing position in which Li Ching-fang was placed, and granted him permission to make the formal transfer on board a Japanese man-of-war. Highly pleased with this concession, Lord Li and his secretaries left on the last day of May, aboard the Kung-yi, via the Pescadores, and arrived off Samtiao Point on June 2nd, where an interview was held with Governor-General Kabayama then aboard the Yokohama Maru, and after lengthy negotiations, on the second and third of June, the transfer of the island was formally effected. Thus the valuable island passed out of the administration of the Chinese Government.[6]

[6] James W. Davidson, *The Island of Formosa*, pp. 270–300.

Chapter V

The Development of the Treaty Ports Since 1860

§ 1. *Delimitation of the Settlement at Ningpo.*

On January 13, 1862, a conference was held at the United States Consulate at Ningpo for the discussion of the government of foreigners residing at the port. At this meeting Mr. W. P. Mangum, the United States Consul, Mr. Frederick Harvey, the British Consul, and M. Leon Obry, the French Consul, were all present. During the conference the problems of the protection of life and property, and the general security, order and good government of foreigners residing at Ningpo, were carefully considered, and as a result of the meeting the following regulations were agreed upon by the consuls present: (1) "That tract of land or country or promontory known as the Keang Pih-Sete, and comprised within the boundaries or limits drawn by the Yung River, the Yu Yau, a branch of the said river, the Pih-Sha-Ho Creek, and a line drawn across the field from the Sge-chow-taue (or temple) to join the Yu Yau River above mentioned, (the whole site forming an irregular quadrilateral or trapezium), shall from this date and hereafter be assumed and considered as the foreign site, within which foreigners shall reside free from any interference of any nature whatsoever, subject always to their respective treaty obligations." (2) However, the consuls reserved to themselves the right to make and establish such rules and regulations within the limits above mentioned as the future necessities of the settlement might render necessary, such regulations to be in conformity with the provisions of their respective treaties with the Chinese Government.[1]

§ 2. *Plan for the Municipal Government of Shanghai.*

The remodeling of the municipal government of Shanghai formed an exciting problem in 1863. The committee appointed for this purpose decided that the opinion of Mr. Bruce, the British Minister, on the status of the treaty ports was 'unquestionably sound', and that the only course for the community to take was to form a munic-

[1] *United States Diplomatic Correspondence*, 1863, pp. 856–857.

ipal system on the principles laid down by him. Accordingly, they drew up a plan founded upon those principles, which were, briefly: (1) that "whatever authority (territorial authority) is established shall be derived directly from the Imperial Government through our ministers;" (2) that such "authority will not extend beyond simple municipal matters—roads, police, and taxes for municipal objects;" (3) that the Chinese, "not actually in foreign employ, shall be wholly under the control of the Chinese officers, just as much as in a Chinese city;" (4) that "each consul shall have the government and control of his own people, as now, the municipal authorities simply arresting offenders against the public peace, handing them over and prosecuting them before respective authorities, Chinese or other, as the case may be;" and (5) that there "shall be a Chinese element in the municipal system, to which reference shall be made, and assent obtained to any measure affecting the Chinese residents, if the necessary concurrence can be obtained that all the foreign quarters shall be united under one municipal system."

On April 16, 1863, the American Consul at Shanghai submitted this plan to Mr. Anson Burlingame, the American Minister. Immediately on the receipt of the letter, Mr. Burlingame entered into communication with the British, Russian, and French Ministers, and after conferring with them and ascertaining their views, he informed the Consul that they all concurred in the principles and would unite in recommending the proposed plan to the Chinese Government. The Chinese authorities in turn accepted the plan, and there was thus laid the foundation of a municipal system for Shanghai which is now regarded as the 'model' settlement in China.[2]

§ 3. *Opposition to the granting of an exclusive concession sought by the French Consul, and the understanding reached with Foreign Ministers not to seek exclusive concessions in the treaty ports.*

On August 17, 1862, M. Edan, the French Consul, undertook to secure the concession of a portion of the port of Ningpo to the French Government, addressing an official communication to the Ningpo Taotai to this effect:

> It is expedient that a place may be fixed for the French concession . . . I pray his excellency (the Taotai) to make known by public proclamation that in virtue of his powers, and conformably to the treaties of France with

[2] *United States Diplomatic Correspondence*, 1863, pp. 851–857; *North-China Herald*, April–August, 1863.

China, it has determined that the limits of the quarter designed for the residence of the French shall be those hereafter to be known: at the east, the river which leads to Tchenpai; at the south and west, the river which leads to Yu Yao; at the north, a line drawn from the pavilion of the greenhouse to the pavilion of the pagoda called Yangshen Tsonye, and serving for the preparation of tea; this line, prolonged to the river of Yu Yao, goes to meet the land of a Chinese called Sic. I pray you, moreover, honorable Taotai, to have the goodness to announce in this notification: first, that in the case where indigenous proprietors should refuse to sell to the French in the limits defined above, or exact any prices which are not conformable to the Chinese prices current, you will intervene to endeavor to make the people obey the prescriptions of the article of the treaty above; and, second, that as for the subjects of other empires who would wish to make a settlement in the quarters which are now in question, they should have to explain themselves to this effect with the consul of the nation which this proclamation concerns. By that a proof will be given to foreigners that the French authorities, in claiming a concession of ground for their countrymen have not had in view to hinder respectable interests from establishing themselves by the side of them, but that they have wished only to make a reservation in favor of interests which they have for a special duty to protect.

The American Consul protested against this demand for a separate French concession, and on August 29 he addressed to the French Consul a note saying: "I . . . frankly confess that a sense of duty compels me to refuse my assent to the step you have taken as being in direct contravention to the understanding among the three treaty powers at the conference held on the 13th of January last, and ratified at the conference held on the 31st of May last . . . In fact, sir, when we take into consideration the situation of the property belonging to foreigners here, mixed together in all conceivable ways, I do not see how separate concessions can be made in the Kiang Pilo settlement without great injustice to the citizens of at least two of the treaty powers."

Later, on September 4, the American Consul referred the matter to the American Minister, who immediately, in an interview with the Chinese authorities at Peking, supported the Consul's contention, not only because the French Consul's attempt was in violation of the arrangement made on January 13, but on the broad ground that "any concession of territory would be an abridgement of our (American) treaty rights;" and the Minister warned the Chinese authorities that such concessions, if made, would not only destroy American treaty

rights, but would be the beginning of the disruption of the Empire. The Chinese Government replied that it had not granted such concession, nor would it, and thanked the American Minister for taking a position so much in accordance with their rights. Mr. Burlingame, the United States Minister, in his letter dated April 18, 1863, to Mr. Seward, Secretary of State, said: "I never failed in my interviews to keep the non-concession doctrine before them (the Chinese authorities), because I had been made aware in Shanghai, by conversations with the British Consul, that he and the British residents supposed they had a *quasi* territorial concession at Shanghai over which they could maintain jurisdiction not only over British subjects, but over Chinese. This assumption led the French to make like claims, and the result was that there was a race, apparently, between the British and French local authorities as to which could secure the most. I brought the question, in many conversations, to the attention of the British and Russian Ministers, and, since his arrival, to the French Minister. I am happy to say that I found my views accorded with theirs, and that we are now, on this most important question, in perfect agreement; and this agreement is a guarantee of the territorial integrity of the Chinese Empire."

In referring to the legal status of the so-called 'foreigners' concessions', the British Minister, Sir F. W. A. Bruce, wrote to the British Consul at Shanghai that "the British concession at Shanghai was neither a transfer nor a lease of the land in question to the British crown," but was "simply an agreement that British subjects should be allowed to acquire land for their personal accommodation within a certain space, in order that they might have the advantage of living together. The land so acquired remains," said the British Minister, "Chinese territory; it is subject to the land tax; and if the jurisdiction of the Chinese Government over it is desired, it is denied, because in China it was deemed essential for the security of British trade that the person and establishment of the trader should be secured from molestation. But the character of the concession has been entirely altered by the acts of foreigners themselves. Instead of being a foreign settlement, it has become a Chinese city, in which a few foreigners reside, amidst a large Chinese population. The security and comfort which were supposed to be derived from isolating the foreign community have been sacrificed, and land has been acquired, not for the legitimate pur-

pose of accommodating foreigners, but in order to build on it Chinese houses, which are tenanted by Chinese at high rents, attracted by the protection our bayonets afford, and by immunity from their natural authorities." Further, he said that the Chinese authorities were deprived of the power of dealing with them, as the Chinese residents were to be taxed for municipal purposes, and that the Chinese Government's interference was to be limited to judgment and punishing them in cases tried before the "mixed consular and municipal government." He therefore declared it to be his duty to remind the British Consul that the Chinese Government had never formally abandoned its rights over its own subjects, nor had the British government ever claimed or expressed any desire to exercise a "protectorate over them." And in conclusion, he said: "I don't understand what interest Her Majesty's government has in lending itself to a system which is unjustifiable in principle, which would be attended with endless embarrassment and responsibility, and which the Chinese Government would never submit to willingly. Great Britain has no interest except in providing a secure place for British trading establishments; and whatever inconveniences may arise from the conversion of the settlement into a Chinese town, I do not think Her Majesty's government will be induced to seek a remedy for them by extending its jurisdiction over a larger section of the Chinese population. Because we protect Shanghai from falling into a prey to a horde of brigands, it does not follow that we are prepared to interfere with the natural relation of the Chinese to their own Government . . . I am convinced that Her Majesty's government would wish to see the limits of the so-called concession reduced, so as to exclude the Chinese, rather than extended, so as to embrace a greater number of them. Our interests in China are trade and pacific relations with the authorities; and I know no more fertile sources of misunderstanding than the collection of Chinese within our limits. This is not a question which affects Shanghai alone; it affects our relations with the whole Chinese Empire; and, considering the effect of our example, it is of the utmost importance that we should take no step which cannot be defended upon sound international principle."[3]

[3] *United States Diplomatic Correspondence*, 1863, pp. 850–859, 863, 882; *North-China Herald*, 1862–1863.

§ 4. *The Regulations of the French Municipal Government at Shanghai.*

Although there was a joint proposition of the foreign ministers in Peking for some kind of simultaneous action on the question of a common municipality at Shanghai, and although M. de Bellonet, the French Chargé d'Affaires, recommended a fusion of the entire foreign settlement under one municipality, yet his plan was overruled at Paris. In 1866, a committee was appointed in Paris to devise an organization for the administration of municipal affairs at the French concession at Shanghai. The plan that they made was approved by the Paris government and came into force on September, 1866. These regulations for the municipal organization of the French concession at Shanghai were proclaimed by the French Consul at Shanghai for public notification. The characteristic feature of French rule, great centralization, is apparent in every article, and, indeed, one is a little puzzled, after reading them over, to know what the Consul cannot, and what the council can do, for the former is everything, and without him the latter is nothing. He convokes it when he likes, suspends or dissolves it if he pleases, and then nominates a provisional council for three or six months, which seems likely to be seldom needed, however, for he can veto or suspend every act it passes, until he reports to the French Minister at Peking; and finally, the police is placed under his sole control. In Article 1 of this regulation it provides that the municipal body of the French concession at Shanghai is composed of the Consul-general of France, and of eight municipal counselors, four of which are French and four foreign, all to be chosen by election; that the municipal counselors are chosen for two years but to be renewed by half every year. Article 2 provides that all Frenchmen and foreigners of twenty-one years old are electors under the following conditions: (*a*) Those owning real property with a good title within the limits of the concession; (*b*) Those renting land in the concession with an annual rent above 1,000 francs; (*c*) Those living in the concession over three months, with an annual revenue of 4,000 francs. Article 3 provides that the Consul-general makes out the electoral list, revises it annually, and convokes the assembly of electors; and that the electoral operations are verified by the municipal council. Article 4 provides for the qualification of members of the assembly of electors, and Article 5 provides for

secret ballot. Article 6 provides that the council will not assemble until called together by the Consul-general, but it may be convened whenever half the members petition it in writing. Article 7 provides that the Consul-general has a right to preside over the council; that the other officers shall consist of a vice-president and a treasurer, chosen by the council every year from its members; and that deliberations are decided by a majority, but in case of a tie the president decides. Article 8 provides that the Consul-general has the right to suspend or dissolve the municipal council, but must give his reasons for it to the minister of foreign affairs and to the French Minister at Peking; that the suspension must not exceed three months. It also provides that in case of dissolution the electoral assembly must be convoked in six months from the time of the dissolution. It further provides that in the meantime a provisional commission, formed by the Consul-general, takes the place of the municipal council. Article 9 provides that the municipal council shall discuss the following subjects: (*a*) The municipal budget of receipts and expenses; (*b*) The tariff for collecting the municipal revenues; (*c*) The regulation of dues among the tax-payers; (*d*) Petitions for exemption or reduction of tax; (*e*) The mode of collecting the tax; (*f*) The purchases, sales, exchange, and location of municipal property; (*g*) Opening streets and public squares, and the construction of other public works; (*h*) Labors to promote health, and work on roads; (*i*) Seizure of property for public use; (*j*) Regulations concerning roads and the public health; (*k*) Upon all other subjects to which the attention of the council is called by the Consul-general. Article 10 provides that the deliberations of the municipal council are not in force until signed by the Consul-general; that the Consul-general must execute every deliberation of subjects in Paragraphs *a* to *f* of the 9th Article within eight days, but the Consul may refuse to execute a deliberation of the municipal council on the subjects enumerated in Paragraphs *h* to *k* of the preceding article, provided the French Minister at Peking approved such action. Article 2 provides that the sessions of the municipal council may be public, and the debates in secret session may be published according to special decisions of the council, approved by the Consul-general; and that sessions in which the council fixes the annual budget of receipts and expenses must always be public, unless a majority of the council oppose it. Article 12

provides that the municipal council has charge of highways, water distribution, lighting the streets, municipal property, execution of works of public utility, fixing the tax lists, and collection of the municipal revenues; that it will also prosecute delinquent taxpayers; that it elects its secretary; and that it also appoints all employees in the municipal service, and suspends or revokes their commissions. Article 13 provides that the Consul-general is charged with the preservation of order and public safety in the limits of the concession; that he has charge of the police force, the expenses of which are paid by the municipality, and that he appoints their agents, suspends or revokes their commissions. Article 14 provides that violations of road regulations are tried by a delegate of the municipal council, with appeal to the Consul-general; that violations of police regulations are judged by the Consul-general or one of its officers; and that in case of presecution for non-payment of taxes the municipal receiver summons the delinquent before the consular court. Article 15 provides that if the person tried for one of the three causes mentioned is not a Frenchman, and objects to the competency of the judges, he must be sent before the judges of his nation. Article 16 provides that no foreigner can be arrested within the limits of the concession by order of a judge or foreign court without permission from the Consul-general of France or one of his agents. Article 17 provides that the Consul-general, when he thinks proper, and after consulting the municipal council, may call an extra assembly of the electors, and even all the French and foreigners, who have no vote in the concession, to get their opinion on questions of general interest to be submitted to them. Article 18 provides that in case of the absence of the Consul-general, or a vacancy in his office, all the powers and prerogatives conferred upon the Consul-general by the present regulations shall devolve upon the agent of the consulate.

On receiving copies of these regulations, the British Consul, Mr. C. A. Winchester, and the American Consul, Mr. Geo. F. Seward, considered them together carefully, and on July 9 addressed a joint note to Viscount de Montmorand, the French Consul at Shanghai, requesting him to delay their publication, and in this letter they said:

We foresee many difficulties in making these regulations applicable to persons not French subjects who may be resident within the limits to which

they refer. So far as regards Englishmen and Americans, any rules, to be obligatory, must be made or enacted by their own authorities, as is provided by the two governments. Until they have been ratified in the proper quarters we can take, therefore, no steps to aid in enforcing them . . . We believe, moreover, that the tenor of the regulations will not fail to give rise to the impression that it is the intention of the government of France to assume territorial dominion in China, an intimation which we do not in the least attribute to it, because it is directly opposed to the policy of cooperation which has heretofore received the sanction of the several governments. . . . Considering that it cannot be the desire of the government of France to abridge the privileges of the people of other nations living here, or to give rightful ground to any to believe, that it is its intention to assert unusual powers here, and considering that a general desire has been expressed in high quarters for a reference to the several governments concerned, with a view to the delineation of a general basis for the management of municipal matters in Shanghai, we suggest that the publication of the regulations be delayed until information can be had from Peking as to whether the reference referred to has been made.

Viscount de Montmorand replied on July 10 that he could not delay the publication of the regulations as requested and said: "I cannot accede to your wishes in delaying the publication of the regulations in question . . . my orders are positive, and I cannot disobey them. But, from courtesy, and to show you my wish to harmonize with you, I take the responsibility to delay the execucution of the regulations till the 1st of September, instead of carrying them into effect immediately, as I was instructed." He also stated: "Yet I am happy to see that, though you fear these regulations may give cause to believe the French government intends to extend its territorial dominion in China, you entertain no such idea. You are right in this case, I am sure. In fact, the only intention of the French government is to preserve the rights the Chinese Government has granted it in virtue of Article 22 of the treaty signed in 1844 between Mr. Lagranée and the Chinese Government. I can, then, give you the firm assurance that the French government has not the least intention or desire to diminish the privileges of the inhabitants of Shanghai, to whatever nation they may belong, or to claim extraordinary powers in China."

On receiving this explanation, the American Consul at Shanghai wrote to the French Consul, Viscount de Montmorand, on July 11, reserving the obedience of the United States citizens to these regu-

lations in whose formation they had had no voice. Then the American Consul also wrote to the American Minister at Peking on the same day, and in the meantime he also forwarded those correspondence to his superior at Peking. In this note, the American Consul, Mr. Geo. F. Seward, said: "The treaties of foreign governments with China . . . provide for the complete removal of the citizens of these several countries from amenability to the government of China, and authorize each government to extend an intercurrent jurisdiction over its respective nationalities. There is no treaty between the several foreign governments, or any of them, which grants to either or any of them jurisdiction of any kind over the citizens of another or other powers; nor is there any authority in the Chinese Government to grant such jurisdiction, since it has already renounced in favor of the several nationalities, individually, all its natural powers over their respective citizens. It is manifest, then, that to form at any port a municipal establishment which shall be enabled to levy taxes and collect them at law, qualifications of fundamental importance, it is indispensable that the authorities of the several nationalities shall concur in creating regulations having such intent and effect. The principle thus set forth has received general support. So long ago as 1854 a code of land regulations was framed by the Consuls of England, France, and the United States, then representing almost the whole of the foreign interests involved. They were approved by the ministers of those powers, and by the Chinese government through its local representative. They have received from time to time the sanction of other powers, and nothing should have remained but to improve and enlarge them as circumstances might demand."

The American Minister at Peking on July 30 replied Mr. Geo. F. Seward, the United States Consul at Shanghai, in which he commended the spirit and cooperation between the British and American Consuls' protest against the violation of their rights by the new code of 'réglements' for the French concession at Shanghai.

Then the American Minister at Peking referred this matter to Mr. William H. Seward, Secretary of State, who immediately instructed Mr. John A. Dix, the American Minister at Paris, to communicate this matter to the French government, and on July 24, 1867, the French government replied that "in regard to the cabinet of London, I am happy to find myself able to announce to

you . . . that it gives its complete adhesion to the French municipal regulations. It recognizes that the fusion of the two establishments situated on the north and south of the Yang-King-Pang is henceforth impracticable, and that on the other hand it cannot contest the right of the Imperial Government to regulate, as it has done, by delegated authority from the court of Peking, the administration of the quarter especially appropriated as the residence of French subjects. One single provision had raised on its part some objections, which I was examining at the time when I received your communication, and which I fortunately succeeded in removing. It had appeared to the London cabinet that the 16th article of the regulations did not protect in terms sufficiently explicit the principle of the rights of persons, and it demanded that the sense of the article should be defined by an explanatory declaration intended to prevent any application contrary to these principles. To respond still more completely to its desire, and to prevent analagous objections which might be presented hereafter by other governments, I have decided to alter the 16th article entirely, and have announced my intention to substitute the following provision: 'The Consul-general, in concert with the authorities under whose jurisdiction the foreign residents may be placed, and in accordance with the principles of a just reciprocity, shall determine the manner of the execution of the warrants of arrest, which their authorities may issue, as well as of all judgments and orders of seizure issued against strangers, resident or in transit in the concession'. The British government declared immediately that this change satisfied entirely the objections which it had felt obliged to make."[4]

§ 5. *The Chefoo Convention of September 13, 1876, between China and Great Britain.*

By Article 1 of Section 3 of this agreement signed at Chefoo between the two countries it is provided that no li-kin should be collected in the treaty ports; that the Chinese Government will open Ichang, Wuhu, Wenchow, and Pakhoi as treaty ports; that "the British government will, further, be free to send officers to reside at Chungking to watch the conditions of British trade in Ssu-chuen. British merchants will not be allowed to reside at

[4] *United States Diplomatic Correspondence*, 1866, Part I, pp. 528–536; 1867, Part I, pp. 77, 195, 200, 269, 270, 271, 465, 508, 509.

Chungking, or to open establishments or warehouses there, so long as no steamers have access to the port. When steamers have succeeded in ascending the river so far, further arrangements can be taken into consideration." Article 2 provides that at all treaty ports, whether opened by earlier or later agreement, at which no settlement area has been previously defined, it will be the duty of the British Consul, acting in concert with his colleagues, the consuls of other powers, to come to an understanding with the local authorities regarding the definition of the foreign settlement areas. By Article 2 of Section 2 it provides that the British government is going to revise the special code for governing the British Supreme Court at Shanghai; that it is now understood that the Tsungli Yamen will write a circular to the legations, inviting foreign representatives at once to consider with the Tsungli Yamen the measures needed for the more effective administration of justice at the treaty ports. The third article provides that so long as the laws of the two countries differ from each other, there can be but one principle to guide judicial proceedings in mixed cases in China, namely, that the case is tried by the official of the defendant's nationality, the official of the plaintiff's nationality merely attending to watch the proceedings in the interests of justice, and if the officer so attending be dissatisfied with the proceedings, it will be in his power to protest against them in detail, and the law administered will be the law of the nationality of the officer trying the case.

On March 31, 1890, an additional article to the Agreement between Great Britain and China of September 13, 1876, was signed at Peking between the two Powers. Section I provides for the opening of Chungking to be a treaty port, and that British subjects shall be at liberty either to charter Chinese vessels or to provide vessels of the Chinese type for the traffic between Ichang and Chungking. Section 2 provides that merchandise conveyed between Ichang and Chungking by the above class of vessels shall be placed on the same footing as merchandise carried by steamers between Shanghai and Ichang. Section 3 provides that all regulations as to the papers and flags to be carried by vessels of the above description, as to the cargo certificates with which they shall be provided, as to the re-package of goods for the voyage beyond Ichang, and as to the general procedure to be observed by those engaged in the traffic between Ichang and Chungking with a view

to insuring convenience and security, shall be drawn up by the Superintendent of Customs at Ichang, the Taotai of the Chuan Tung Circuit, who is now stationed at Chungking, and the Commissioner of Customs in consultation with the British Consul, and shall be liable to any modifications that may hereafter prove to be desirable and may be agreed upon by common consent. Section 4 provides that chartered junks shall pay port dues at Ichang and Chungking in accordance with the Yangtsze Regulations; that vessels of Chinese type, if and when entitled to carry the British flag, shall pay tonnage dues in accordance with treaty regulations; that it is obligatory on both chartered junks and also vessels of Chinese type, even when the latter may be entitled to carry the British flag, to take out the Maritime Custom-House special papers and a special flag when intended to be employed by British subjects in the transport of goods between Ichang and Chungking, and without such papers and flag no vessel of either class shall be allowed the privileges and immunities granted under this Additional Article, and that provided with special papers and flag, vessels of both classes shall be allowed to ply between the two ports, and they and their cargoes shall be dealt with in accordance with treaty rules and the Yangtsze Regulations; that all other vessels shall be dealt with by the Native Customs; that the special papers and flag issued by the Maritime Customs must alone be used by the particular vessel for which they were originally issued, and are not transferable from one vessel to another, and that the use of the British flag by vessels the property of Chinese is strictly prohibited; and finally that infringement of these regulations will, in the first instance, render the offender liable to the penalties in force at the ports hitherto opened under treaty, and should the offense be subsequently repeated, the vessels special papers and flag will be withdrawn, and the vessel herself refused permission thenceforward to trade between Ichang and Chungking. Section 5 provides that when once Chinese steamers carrying cargo run to Chungking, British steamers in like manner have access to the said port.[5]

§ 6. *American Settlement at Wen-chow.*

Previous to the visit of Mr. Edward C. Lord, the American Consul at Ningpo, to Wen-chow, Mr. Davenport, the British consul at

[5] 71 *British and Foreign State Papers*, 753 *et seq.*; 82 *Ibid.* 15 *et seq.*; *United States Foreign Relations*, 1877, p. 93; 1890, pp. 199–203.

Shanghai, had visited it, and had arranged with the Chinese authorities for a British concession. The terms of the British Concession were carefully considered and were regarded as very liberal on the part of China. They were put in the form of a joint arrangement, which was signed and sealed in duplicate by both parties. When the American Consul at Ningpo first visited this port on March 21, 1877, he found that the best locality for a foreign settlement had already been occupied by the English, but with the exception of a less desirable situation, he secured all that the British obtained. The concessions are equal in size, and they lie side by side, on the south or city bank of the river. That of the English is nearer to the city, but that of the American, even the farthest limit of it, is little, if any, more than a mile away. The ground in both is low, and was not particularly inviting, but for the purpose intended it seemed the most eligible place near the city. The agreement regarding the American concession is much the same as that of the English. It was made between Fang, the intendant at Wen-chow, and Edward C. Lord, the United States Consul at Ningpo and dependencies, on March 27, 1877. The agreement reads:

WHEREAS arrangements have been made for opening for trade the port of Wen-chow: now, therefore, the said intendant and consul agreed to select a piece of ground lying outside of the east gate of the city, in the place called Choo Pah Poo, beginning at the east limit of the English concession and extending along the river 250 measures, (a measure is ten Chinese feet), and extending from the river to the distance of about ninety measures, for an American settlement, where American merchants may erect hongs, warehouses, and dwellings for their use. The grounds thus included may be temporarily used by their proprietors; but these proprietors may not lease, sell, or dispose of them to other parties, either Chinese or foreigners.

When the consul shall have arrived at Wen-chow, and building-sites shall be wanted, he, with the intendant or with the officer whom the intendant may detail, shall fix a fair price for them. The proprietors shall not demand a price too high nor shall American citizens insist on one too low. Both parties shall agree to what is fair. And when the price shall have been paid, the proprietors must give possession.

When the consul shall have arrived at Wen-chow, and the ground shall have been measured, it shall be permitted to put up stone landmarks, with the inscription cut on them, "The American Settlement." If any American merchant shall need ground for use, on application to his Consul, the Consul shall designate it for him, and he shall be allowed to rent and use it. Public

roads, and all matters within the settlement, shall be under the control of the Consul.

At present, on account of the rains, ground cannot be carefully measured; but the intendant will direct the local officer to make out a list of its proprietors, and to inform them that they may not rent or sell their grounds to others.

As to the depth or shallowness of the river, accurate measurements have not yet been made, so it is not known whether steamers will be able to come in and anchor, or whether they will have to anchor at Chwang Yuen Khean, at Poo-Chow, or at some other place. It may happen, therefore, that American merchants will wish to put up buildings at the place of anchorage elsewhere. In which case, notwithstanding this agreement, American citizens, in accordance with the twelfth article of the treaty made at Tientsin, will be allowed to rent grounds and erect buildings wherever they may choose . .

Boundaries: On the north, the river; on the south, a line 90 measures from the river; on the west, the English settlement; on the east, a line 250 measures from said settlement.[6]

§ 7. *The Franco-Chinese War and the Treaty Ports (1884–1887).*

Early in 1884 hostilities were commenced between the French and Chinese troops without a formal declaration of war. The authorities of Canton, alarmed at this outbreak, proceeded to place obstructions in the entrance to the port in order to prevent possibility of attack by the French. Mr. Lowell, the American Minister to Great Britain, had an interview with Lord Granville on this matter. Mr. Lowell had been instructed to the effect that the treaty ports could not rightfully be closed by either France or China, except the latter should do so for necessary protection, and that should France agree absolutely and not conditionally to make no attack on the treaty ports, a protest against their obstruction would be made to China by the American Government. The foreign ministers at Peking protested against such obstruction, as they were afraid that the other ports might follow the action of Canton as a precedent. Sir Harry Parkes, the British minister, on January 15, 1884, protested that the step taken by the Viceroy at Canton was illegal in itself, and was useless as a defensive measure, and was injurious to British and foreign interests generally. As regarded the legality of the measure, the Tsungli Yamen maintained that "as trade was not obstructed, but only slightly impeded, the Chinese Government could not be accused of blocking the ports. The Whampoa Channel was required for torpedo practice, and the

[6] *United States Foreign Relations*, 1877, pp. 95–98.

Chinese Government was justified in barring it to foreign ships on this ground alone. Apart from this consideration, the Viceroy at Canton was in supreme command, and the Yamen could not interfere with any arrangements he might see fit to make as a protection against invasion. The powers of a military commander-in-chief in China were necessarily large, as he might have to answer with his life for any error of judgment or tactics." As regarded the injury done to foreign interests, the Tsungli Yamen maintained that the Chinese Government was entitled to some consideration, and that the subjects of friendly powers in China might justly be expected to share in her fortunes and reverses, and it was simply out of consideration for foreign interests that access to Canton had not been entirely shut off. Further, in this interview, Minister Chang of the Tsungli Yamen said to Sir Harry Parkes that "if China could be certain that France would be guided by the laws of war in her future action, and an authoritative assurance could be obtained from any quarter that France would not attack without due notice, Chang-ta-jen would promise, on his own responsibility, that the obstruction at Canton should be removed." The gravity of the question seems to have been removed in a great measure by the assurance given by the Tsungli Yamen that a passage of over 100 feet in width would be left in both channels for the convenience of steamers and sailing vessels. In this note to the American Minister at Peking, Prince Kung of the Tsungli Yamen said: "His Imperial Highness has received a telegram from the Viceroy of the two Kwang provinces, Chang . . . In this the Viceroy informs His Imperial Highness that, regarding the proposed experiments in torpedo warfare, which it is proposed to practice in the Canton River, so long as there were no actual hostilities there would be left a space of over 100 feet for the convenience of vessels entering and leaving the port. . . The Viceroy also says that the admirals and consuls agree that the proposed arrangements for torpedo practice do not affect the convenience of commerce." Later, in a telegram dated January 26, 1884, the British Consul at Canton informed Sir Harry Parkes that Chang, the Viceroy of Canton, promised further to extend the space to 150 feet. In a letter dated April 18, 1884, to the American Minister at Peking, Mr. Frelinghuysen, Secretary of State, observed: "Even, however, under this favorable modification, the obstruction to the channel at Canton and Wham-

poa can only be tolerated as a temporary measure, to be removed as soon as the special occasion therefor shall have passed, and under no circumstances to be admitted as a precedent for setting obstacles to open navigation at the treaty ports in time of peace, under pretext of being intended for ultimate strategic defense in the contingency of future war."

On August 23, 1884, Admiral Courbet sailed up the Min River with his fleet. When he reached Foochow, he bombarded the forts, and then he captured the arsenal. However, he surprised the natives after having accomplished that part of his hostile measures, for as soon as he had captured the arsenal, he then retired to Matsou Island. His next appearance in a treaty port was on March 1, 1885, when the French fleet moved boldly up to the fortifications at the mouth of the Ningpo River. The French did not succeed in taking the city, but the blockade of Ningpo continued until armistice was agreed upon and peace was finally concluded.

On February 27, 1885, Mr. Edwin Stevens, the American Consul at Ningpo, wrote to Mr. Young, the American Minister at Peking, for instruction as to whether it would be advisable for him to enter or clear American vessels supplying either belligerent with contraband of war, and in this letter he also said: "As our nation is at peace with both France and China, I would regard it as a questionable right upon my part to enter and clear a ship flying the American flag loaded with contraband articles of war for either of the contending fleets, and more especially so if she had cleared for another port than this." On March 30, the American Minister replied: "I agree with you that it would be a questionable right, under existing circumstances, for a vessel flying the American flag to carry contraband of war for either of the belligerent powers. Such an enterprise can only be undertaken at the risk of the owners of the vessel. No consuls should in my opinion give sanction to what would be regarded by either China or France as a violation of the obligations of neutrality."

During the month of August, 1884, Chang Chi-tung, the Viceroy of the Two Kwang Provinces, had the southern channel of the Canton River closed by barriers and obstructions of piles, stones, and sunken junks, to prevent hostile ships menacing Canton. The southern channel offers the easiest means of access for vessels to Canton, the water in it being much deeper than that in the northern

channel, when at low tide there is not over six feet a few miles below Canton. Since this date the southern channel has remained closed to navigation, notwithstanding the united efforts of the consuls, who represented to the Viceroy that great detriment to foreign trade occasioned by the closing of the only deep-water approach to Canton, for, not only were vessels obliged to wait for the tide, but in many cases they were absolutely debarred from reaching Canton, and had to lighten their cargo, occasioning thereby great additional expense. The consuls having entirely failed in their endeavors, the question was taken up by the diplomatic corps at Peking. In a conference held on April 16, 1886, it was decided that the different legations should address dispatches to the Tsungli Yamen on the question. On May 21, Mr. Charles Denby, the American Minister at Peking, wrote to the Yamen, stating the fact that the obstructions in the Canton River by the continual silting of the river were being continually added to, so that if they were not shortly removed they would constitute a permanent barrier, which would close to the commerce of the world one of the chief emporiums of trade in China. Moreover, he alluded to the fact that during his recent visit to Canton, he had learnt that seventy vessels had during the past year been kept away from Canton, and that the maintenance of these obstructions was a source of general anxiety to the foreign commercial community of Canton. In a few days after the receipt of these protests, the Tsungli Yamen sent an identical reply to the various legations, stating that it was in receipt of a dispatch from the Viceroy of Canton, in which, after describing the nature of the two channels and the facilities which they offer, he stated that the foreign consuls had requested him either to remove the obstructions in the south channel (Sha-lu), or to appoint a deputy at Whampoa who could transact the business of ships. These points the Viceroy had referred to the Commissioner of Customs at Canton, Mr. Hippisley, who replied in substance that during the previous year 1,067 foreign vessels had entered or cleared at Canton, and few vessels had experienced any delay—one day at the most—by being obliged to navigate the north channel. As to the request made by the German Consul that a deputy be appointed at Whampoa, it was deemed inexpedient, as the bulk of foreign trade with Canton was carried on in native junks, and the burden imposed by the closing of the channel only bore on Chinese subjects. The chief argument of the Yamen against

reopening the south channel is that the Viceroy having memorialized the throne requesting that it might be closed forevermore, the Emperor had given his approval, and thus disposed of the question.

Mr. Charles Denby, the American Minister at Peking, reported to Mr. Bayard, Secretary of State, on May 31, about this matter. In his note dated July 28, Mr. Bayard replied to Mr. Denby, affirming the position assumed by the State Department in 1884, and said: "You are therefore instructed to make use of the best efforts in your power to induce the Chinese Government to remove the obstructions in the Canton River, which, as you stated, operate to close the port of Canton to the merchant vessels of the United States."

Further correspondence between the foreign ministers at Peking and the Tsungli Yamen resulted in no further progress. In his note dated October 27, 1887, to the Secretary of State, the American Minister at Peking said: "The appointment of a higher official to attend to the duties affecting commerce at Whampoa I regarded as desirable, but I do not admit the right of China to put obstructions at Whampoa that prevent vessels of deep draught from proceeding to Canton in time of peace."

This plan for the appointment of a higher officer to look after the foreign commerce at Whampoa was communicated to the American Minister at Peking by the Tsungli Yamen on October 10, 1887, in a note saying:

> Last year your excellency addressed the Yamen, requesting that steps be taken to cause the removal of the barrier at Whampoa in the general interest of commerce.
>
> At the time the Yamen replied that the barrier at Sha-lu could never be removed, a decree having been issued by the throne, and further discussion upon the subject would be of no use.
>
> Later, his excellency Mr. Von Brandt, Minister for Germany, at an interview, requested that an officer be appointed at Whampoa, and that the rule adopted at Taku be carried into effect there, which would be convenient to commerce.
>
> The Yamen would observe that the appointment of an officer to reside at Whampoa in order that loss of time by delay to foreign merchants may be avoided is certainly an admirable and satisfactory plan. Notes have repeatedly been sent to the Governor-General of the Two Kwangs to take under consideration the circumstances and devise a scheme that could be enforced.

That officer has reported that, under the present regulations in force at Whampoa, on the arrival of foreign vessels the customs tide-surveyor issues a permit to open hatches and discharge into cargo-boats. After loading, the hatches of the cargo-boats are sealed by the tide-surveyor, and on arrival at Canton the hatches are opened, cargo examined, and duties paid.

In the cases of vessels loading at Whampoa, the goods to be shipped are first examined at the Custom House at Canton, and after the payment of export duty a permit to ship in cargo-boats is issued. After loading, the hatches are sealed, and on arrival at Whampoa the tide-surveyor reexamines the cargo, and if there be no mistake permission is granted to transship to the foreign vessels. This rule is the same as the one in force at Taku governing imports and exports.

But foreign vessels, on arrival at Taku, must first be reported by the foreign consul to the customs before permit is issued to discharge cargo into boats. At present, on the arrival of foreign vessels at Whampoa, if the foreign hong (consignee) gives a bond guarantying the payment of duties, dues, and all other charges within the specified time, and that they will not overstep or evade the rules, it is only necessary then for the vessel's papers and tonnage-due certificates to be presented (to the customs), and the tide-surveyor at Whampoa will at once issue permit to open hatches and discharge cargo into boats. Hence cargo can be discharged and be on its way to Canton before the consul has reported the vessel to the customs.

Further, if the arrival of a vessel at Canton is telegraphed by the tide-surveyor to the customs at Canton, shippers can at once apply for permits to ship export cargo.

When the vessel is ready to clear, the tide-surveyor at Whampoa, after duly examining the export cargo, and the loading of the vessel is completed, hands the grand chop or clearance, with the other papers, to the captain, and he is therefore not obliged to proceed to Canton for them.

Thus it will be seen that the regulation in force at Whampoa governing the importation and exportation of merchandise is much more convenient than the one in force at Taku.

But hitherto at the Whampoa customs there has been only a tide-surveyor, and as the rank of the chief of the tide-waiter class is comparatively low, it is now proposed to appoint a fourth-class assistant deputy commissioner of customs, to reside at Whampoa and take charge of the customs, then giving due weight and importance to the office.

The Yamen would further observe that as the object and purpose of your excellency's communication are to benefit commerce, the plan now proposed by the Viceroy at Canton, together with a request that a deputy commissioner of customs be appointed to reside near at hand (Whampoa) to take the management of shipping, will meet with the wishes of the mercantile class.

The plan adopted at Whampoa is much more convenient than the one in force at Taku, and the ministers (of the Tsungli Yamen) believe your excellency will surely be pleased to agree to it.

On October 27, 1887, Mr. Charles Denby, the American Minister at Peking, replying to the Tsungli Yamen, observed: "You (the ministers of the Tsungli Yamen) also informed me that the barrier at Sha-lu, in the Pearl River, can never be removed, and further discussion upon the subject would be of no use." He expressed regret at that determination of a question in which the commerce of all nations was then interested, and added that the obstruction of natural channels leading to ports had only occurred in time of war, and that it was thoroughly settled by international law, that "when war ceases, such obstructions, when impeding navigation in channels in which large ships are accustomed to pass, must be removed by the territorial authorities." He added: "While I do not admit the right of China, under international law, to close the channel in question, yet the appointment of a higher officer to take charge of the shipping duties at Whampoa seems to be desirable." The condition, however, in the West River was soon changed, for not long after the conclusion of the Franco-Chinese War, the river was again cleared of its obstructions, as their existence was no longer necessary.[7]

Following the termination of this war, a commercial compact was negotiated between M. Cogordan, who had been sent out from France for the purpose, and Li Hung-Chang. At first serious difficulties arose between the plenipotentiaries; and on considering the first draft of M. Cogordan's proposals Li replied, "Almost all the articles are inadmissible by China. I have received," he went on to say, "from the Tsungli Yamen a letter in which twenty out of the twenty-four articles are called in question; and of the remaining four there are two which I for my part cannot accept." In view of this sweeping condemnation, certain amendments were admitted by the French; and the amended treaty was finally agreed to and signed. But it soon became evident that it was unworkable; so it soon became necessary to execute another treaty in the following year (1887), to set right the objectionable clauses. This Additional Convention of Commerce between France and China was signed at

[7] *The Chinese Recorder*, vol. xvi, pp. 208–213, 146–150; *United States Foreign Relations*, 1884, pp. 64, 66–79, 96; *ibid.*, 1885, pp. 156, 160–162, 168–170; *ibid.*, 1886, p. 95; *ibid.*, 1888, pp. 224–225, 270.

Peking on June 26, 1887, by Prince King on the part of China, and M. Ernest Constans on the part of France. The 2nd Article provides for the opening of the treaty ports of Lungchow, Mengtzu, and Manhao says: "En exécution de l'article premier du traité du 25 avril 1886, il est convenu entre les Hautes Parties contractantes que la ville de Long-Tcheou (Lungchow) au Kouang-si (Kuangsi), et celle de Mong-Tseu (Mengtzu) au Yunnan sont ouvertes au commerce franco-annamite; il est entendu, en outre, que Manhao, qui se trouve sur la route fluviale de Laokai à Mong-Tseu, est ouvert au commerce comme Long-Tcheou et Mong-Tseu, et que le gouvernement français aura le droit d'y entretenir un agent relevant du consul de cette dernière ville." But these advantages were given up by the French in response to the prayers of the Chinese authorities, who in their turn virtually withdrew the right of establishing Chinese Consuls at Hanoi and Haiphong.

However, this treaty was again amended by another Convention between China and France in 1895. This Convention was signed, on June 20, 1895, at Peking, by M. Auguste Gerard, the French Minister, and Prince King and H. E. Siu Yong-Yi of the Tsungli Yamen. Article 2 again provided for the opening of Lungchow and Mengtze as treaty ports, and it stated: "Il est convenu entre les Hautes Parties Contractantes que la ville de Long-tcheou (Lungchow), au Kouang-si, (Kuangsi), et celle de Mong-tse, (Mengtze), au Yunnan, sont ouvertes au commerce Franco-Annamite. Il est entendu, en outre, que le point ouvert au commerce, sur la route fluviale de Laokai à Mong-tse, est non plus Manhao, mais Ho-keou, et que le Gouvernement Français aura le droit d'entretenir à Ho-keou un Agent relevant du Consul de Mong-tse, en même temps que le Gouvernement Chinois y entretiendra un agent des Douanes." By Article 3 Sze-mao was opened to trade, and it provided: "Il est convenu que la ville Sse-mao, au Yunnan, sera ouverte au commerce Franco-Annamite, comme Long-tcheou et Mong-tse, et que le Gouvernement Français aura le droit, comme dans les autres ports ouverts, d'y entretenir un Consul, en même temps que le Gouvernement Chinois y entretiendra un agent des Douanes. Les autorités locales s'emploieront à faciliter l'installation du Consul de France dans une résidence honorable." Article 9 provides for the confirmation of existing treaties said: "Les dispositions des anciens Traités,

Accords, et Conventions entre la France et la Chine, non modifiées par le présent Traité, restent en pleine vigueur." [8]

§ 8. *Treaty Ports in Tibet.*

An agreement for the regulation of trade between China and Great Britain was signed at Darjeeling, British India, on December 5, 1893, by A. W. Paul on the part of Great Britain, and Ho Chang-Jung and James H. Hart on the part of China. Article 1 provides that a trade mart shall be established at Yatung on the Tibetan side of the frontier, and shall be open to all British subjects for purposes of trade from May 1, 1894, and that the Government of India shall be free to send officers to reside at Yatung to watch the conditions of British trade at that mart. Article 2 provides that British subjects trading at Yatung shall be at liberty to travel freely to and fro between the frontier and Yatung, to reside at Yatung, and to rent houses and godowns for their own accommodation, and the storage of their goods; that the Chinese Government undertake that suitable buildings for the above purposes shall be provided for British subjects, and also that a special and fitting residence shall be provided for the officer or officers appointed by the Government of India under Article 1 to reside at Yatung; that British subjects shall be at liberty to sell their goods to whomsoever they please, to purchase native products and commodities in kind or in money, to hire transport of any kind, and in general to conduct their business transactions in conformity with local usage, and without any vexatious restrictions; that such British subjects shall receive efficient protection for their persons and property; and finally that at Lang-jo and Ta-chun, between the frontier and Yatung, where rest-houses have been built by the Tibetan authorities, British subjects can break their journey in consideration of a daily rent. Article 3 provides that import and export trade in the following articles: arms, ammunition, military stores, salt, liquors, and intoxicating or narcotic drugs, may, at the option of either government, be entirely prohibited, or permitted only on such conditions as either government, on their own side, may think fit to impose. Article 4 provides that goods, other than goods of the description enumerated in Article 3, entering Tibet from British

[8] 75 *British and Foreign State Papers*, 1110; 76 *ibid.*, 239; 85 *ibid.*, 735; 85 *ibid.*, 744; 85 *ibid.*, 748; 87 *ibid.*, 1170; 87 *ibid.*, 525; H. Cordier, *Histoire des relations de la Chine avec les puissances occidentales*, 1860–1900, vol. ii, pp. 242-552.

India, across Sikkim-Tibet frontier, or vice versa, whatever their origin, shall be exempt from duty for a period of five years, commencing from the date of the opening of Yatung to trade, but after the expiration of this term, if found desirable, a tariff may be mutually agreed upon and enforced; however, India tea may be imported into Tibet at a rate of duty not exceeding that at which Chinese tea is imported into England, but trade in India tea shall not be engaged in during the five years for which other commodities are exempt. Article 5 provides that all goods on arrival at Yatung, whether from British India or from Tibet, must be reported at the Customs Station there for examination, and the report must give full particulars of the description, quantity, and value of the goods. Article 6 provides that in the event of trade disputes arising between British and Chinese or Tibetan subjects in Tibet, they shall be inquired into and settled in personal conference by the Political Officer for Sikkim and the Chinese Frontier Officer, and that the object of personal conference being to ascertain facts and do justice, where there is a divergence of views, the law of the country to which the defendant belongs shall guide. Further, it provides that in the event of disagreement between the Political Officer for Sikkim and the Chinese Frontier Officer, each official shall report the matter to his immediate superior, who, in turn, if a settlement is not arrived at between them, shall refer such matter to their respective governments for disposal. Article 7 provides that despatches from the Government of India to the Chinese Imperial Resident in Tibet shall be handed over by the Political Officer for Sikkim to the Chinese Frontier Officer, who will forward them by special courier; and that despatches from the Chinese Imperial Resident in Tibet to the Government of India will be handed over by the Chinese Frontier Officer to the Political Officer for Sikkim, who will forward them as quickly as possible.[9]

Another Convention was concluded between Great Britain and China respecting Tibet at Peking on April 27, 1906. This compact was signed by Sir Ernest Mason Satow, the British Minister at Peking, and H. E. Tong Shao-yi, Vice-President of the Chinese Board of Foreign Affairs. In the Preamble it affirmed the Convention signed at Lhasa on September 7, 1904, between Great Britain and Tibet, and in part it read: "And whereas a Convention of ten

[9] *Parliamentary Papers*, Treaty Series, No. 11 (1894).

articles was signed at Lhasa on September 7, 1904, on behalf of Great Britain and Tibet, and was ratified by the Viceroy and Governor-General on behalf of Great Britain on November 11, 1904, a declaration on behalf of Great Britain modifying its terms under certain conditions being appended thereto;

"His Britannic Majesty and His Majesty the Emperor of China have to conclude a Convention on this subject and have for this purpose named plenipotentiaries . . . who having communicated to each other their respective full powers and finding them to be in good and true form have agreed upon and concluded the following Convention." Article 1 provides for the confirmation of the Convention of September 7, 1904, between Great Britain and Tibet. Article 2 provides that the Government of Great Britain engages not to annex Tibetan territory or to interfere in the administration of Tibet. Article 3 provides: "The concessions which are mentioned in Article 9 (*d*) of the Convention concluded on September 7, 1904, by Great Britain and Tibet are denied to any state or to the subject of any state other than China, but it has been arranged with China that at the trade marts specified in Article 2 of the aforesaid Convention Great Britain shall be entitled to lay down telegraph lines connecting with India." Article 4 provides for the continuance of the Anglo-Chinese Convention of 1890, and Regulations of 1893.

The Convention between Great Britain and Tibet signed at Lhasa on September 7, 1904, which was confirmed in the Convention between China and Great Britain of April 27, 1906, was very significant in relating to the trade marts. By Article 2 it provides that the Tibetan Government undertakes to open forthwith trade marts to which all British and Tibetan subjects shall have free right of access at Gyantse and Gartok, as well as at Yatung, and that the regulations applicable to the trade mart at Yatung, under the Anglo-Chinese Agreement of 1893, shall, subject to such amendments as may hereafter be agreed upon by common consent between the British and Tibetan Governments, apply to the marts above mentioned, and further that in addition to establishing trade marts at the places mentioned, the Tibetan Government undertakes to place no restrictions on the trade by existing routes, and to consider the question of establishing fresh trade marts under similar conditions if development of trade requires it. Article 5 provides that the Tibetan Government undertakes to keep the roads to Gyantse and

Gartok from the frontier clear of all obstruction and in a state of repair suited to the needs of the trade, and to establish at Yatung, Gyantse, and Gartok, and at each of the trade marts that may hereafter be established, a Tibetan Agent who shall receive the British Agent appointed to watch over British trade at the marts in question any letter which the latter may desire to send to the Tibetan or to the Chinese authorities, and that the Tibetan Agent shall also be responsible for the due delivery of such communications and for the transmission of replies. Article 8 provides that the Tibetan Government agrees to raze all forts and fortifications and remove all armaments which might impede the course of free communication between the British frontier and the towns of Gyantse and Lhasa. Article 9 provides: "The Government of Tibet engages that, without the previous consent of the British Government—(*a*) no portion of Tibetan territory shall be ceded, sold, leased, mortgaged, or otherwise given for occupation, to any foreign power; (*b*) no such power shall be permitted to intervene in Tibetan affairs; (*c*) no representatives or agents of any foreign power shall be admitted to Tibet; (*d*) no concessions for railways, roads, telegraphs, mining or other rights, shall be granted to any foreign power, or to the subject of any foreign power. In the event of consent to such concessions being granted, similar or equivalent concessions shall be granted to the British Government; (*e*) no Tibetan revenues, whether in kind or cash, shall be pledged or assigned to any foreign power, or to the subject of any foreign power." [10]

Regulations respecting trade in Tibet, as amended by those of December 5, 1893, were concluded between China, Tibet, and Great Britain at Calcutta on April 20, 1908, and the ratifications were exchanged at Peking on October 14, 1908. Regulation 1 provides that the trade regulations of 1893 shall remain in force in so far as they are not inconsistent with these Regulations. Regulation 2 provides that the following places shall form, and be included within, "the boundaries of the Gyantse mart: (*a*) The line begins at the Chumig Dangsang (Chlu-Mig-Dangs-Sangs) northeast of the Gyantse Fort, and thence it runs in a curved line, passing behind the Pekor-Code (Dpal-Hkhor-Choos-Sde), down to Chag-Dong-Gang (Phyag-Gdong-Sgang); thence passing straight over the Nyan Chu, it reaches the Zamsa (Zam-Srag). (*b*) From the Zamsa the

[10] *Parliamentary Papers*, Treaty Series, No. 9 (1906).

line continues to run, in a southeastern direction, run to Lachi-To (Gla-Dkyu-Stod), embracing all the farms on its way, *viz.*, The Lahong; the Hogtso (Hog-Mtsho); the Tong-Chung-Shi (Grong-Chhung-Gshis); and the Rabgang (Rab-Sgang), etc. (*c*) From Lachi-To the line runs to the Yutog (Gyu-Thog), and thence runs straight, passing through the whole area of Gamkar-Shi (Ragal-Mkhar-Gshis), to Chumig-Dangsang." Then it states further that British subjects may also lease lands for the building of houses and godowns at the marts, the locality for such building sites to be marked out specially at each mart by the Chinese and Tibetan authorities in consultation with the British Trade Agent; that the British Trade Agents and British subjects shall not build houses and godowns except in such localities, and this arrangement shall not be held to prejudice in any way the administration of the Chinese and Tibetan local authorities over such localities, or the right of British subjects to rent houses and godowns outside such localities for their own accommodation and the storage of their goods. It also provides that British subjects desiring to lease building sites shall apply through the British Trade Agent to the Municipal Office at the mart for a permit to lease, and that the amount of rent, or the period or conditions of the lease, shall then be settled in a friendly way by the lessee and the owner themselves, and that in the event of a disagreement between the owner and lessee as to the amount of rent or the period or conditions of the lease, the case will be settled by the Chinese and Tibetan authorities, in consultation with the British Trade Agent, and that after the lease is settled, the sites shall be verified by the Chinese and Tibetan Officers of the Municipal Office conjointly with the British Trade Agent, and that no building is to be commenced by the lessee on a site before the Municipal Office has issued him a permit to build, but it is agreed that there shall be no vexatious delays in the issue of such permit. Regulation 3 provides that the administration of the trade marts shall remain with the Tibetan officers, under the Chinese officers' supervision and directions; that the trade agents at the marts and frontier officers shall be of 'suitable rank', and shall hold personal intercourse and correspondence with one another on terms of mutual respect and friendly treatment; that questions which cannot be decided by agreement between the trade agents and the local authorities shall be referred for settlement to the Government

of India and the Tibetan high authorities at Lhasa, and the purport of a reference by the Government of India will be communicated to the Chinese Imperial Resident at Lhasa; and that questions which cannot be decided by agreement between the Government of India and the Tibetan high authorities at Lhasa shall, in accordance with the terms of Article 1 of the Peking Convention of 1906, be referred for settlement to the Governments of Great Britain and China. Regulation 4 provides that in the event of disputes arising at the marts between "British subjects and persons of Chinese and Tibetan nationalities," they shall be enquired into and settled in personal conference between the British Trade Agent at the nearest mart and the Chinese and Tibetan Authorities of the Judicial Court at the mart, the object of personal conference being to ascertain facts and to do justice; that where there is a divergence of view the law of the country to which the defendant belongs shall guide; that in any such mixed cases, the officer or officers of the defendant's nationality shall preside at the trial, the officer or officers of the plaintiff's country merely attending to watch the course of the trial; that all questions in regard to rights, whether of property or person, arising between British subjects, shall be subject to the jurisdiction of the British authorities; that British subjects, who may commit any crime at the marts or on the routes to the marts, shall be handed over to the British Trade Agent at the mart nearest to the scene of offense, to be tried and punished according to the laws of India, but such British subjects shall not be subjected by the local authorities to any ill-usage in excess of necessary restraint; that Chinese and Tibetan subjects, who may be guilty of any criminal act towards British subjects at the marts or on the routes thereto, shall be arrested and punished by the Chinese and Tibetan authorities according to law; that justice shall be equitably and impartially administered on both sides; that should it happen that Chinese and Tibetan subjects bring a criminal complaint against a British subject before the British Trade Agent, the Chinese or Tibetan authorities shall have the right to send a representative or representatives, to watch the course of trial in the British Trade Agent's Court; and that similarly, in cases in which a British subject has reason to complain of a Chinese or Tibetan subject in the Judicial Court at the mart, the British Trade Agent shall have the right to send a representative to the Judicial Court to watch the course of trial.

Regulation 5 provides that the Tibetan authorities, in obedience to the instructions of the Peking Government, having a strong desire to reform the judicial system of Tibet, and to bring it into accord with that of western nations, Great Britain agrees to relinquish her rights of extraterritoriality in Tibet, whenever such rights are relinquished in China, and when she is satisfied that the state of the Tibetan laws and the arrangements for their administration and other considerations warrant her in so doing. Regulation 6 provides that after the withdrawal of the British troops, all the rest-houses, eleven in number, built by Great Britain upon the routes leading from the Indian frontier to Gyantse, shall be taken over at original costs by China and rented to the Government of India at a fair rate, and that one-half of each rest-house will be reserved for the use of the British officials employed on the inspection and maintenance of the telegraph lines from the marts to the Indian frontier and for the storage of their materials, but the rest-houses shall otherwise be available for occupation by British, Chinese and Tibetan officers of respectability who may proceed to and from the marts; that Great Britain is prepared to consider the transfer to China of the telegraph lines from the Indian frontier to Gyantse when the telegraph lines from China reach that mart and in the meantime Chinese and Tibetan messages will be duly received and transmitted by the line constructed by the Government of India; and that in the meantime China shall be responsible for the due protection of the telegraph lines from the marts to the Indian frontier and it is agreed that all persons damaging the lines or interfering in any way with them or with the officials engaged in the inspection or maintenance thereof shall at once be severely punished by the local authorities. Regulation 7 provides that in lawsuits involving cases of debt on account of loans, commercial failure, and bankruptcy, the authorities concerned shall grant a hearing and take steps necessary to enforce payment, but if the debtor plead poverty and be without means, the authorities concerned shall not be held responsible for the said debts, nor shall any public or official property be distrained upon in order to satisfy these debts. Regulation 8 provides that the British Trade Agents at the various trade marts now or hereafter to be established in Tibet may make arrangements for the carriage and transmission of their posts to and from the frontier of India; that the couriers employed in conveying these posts shall receive all pos-

sible assistance from the local authorities whose districts they traverse and shall be accorded the same protection as the persons employed in the despatches of the Tibetan authorities; that when efficient arrangements have been made by China in Tibet for a Postal Service, the question of the abolition of the Trade Agent's couriers will be taken into consideration by Great Britain and China; that no restrictions whatever shall be placed on the employment of British officers and traders of Chinese and Tibetan subjects in any lawful capacity; that the persons so employed shall not be exposed to any kind of molestation or suffer any loss of civil rights to which they may be entitled as Tibetan subjects, but they shall not be exempted from all lawful taxation; and that if they be guilty of any criminal act, they shall be dealt with by the local authorities according to law without any attempt on the part of their employer to screen or conceal them. Regulation 9 provides that British officers and subjects, as well as goods, proceeding to the trade marts, must adhere to the trade routes from the frontier of India; and that they shall not, without permission, proceed beyond the marts, or to Gartok from Yatung and Gyantse, or from Gartok to Yatung and Gyantse, by any route through the interior of Tibet, but natives of the Indian frontier, who have already by usage traded and resided in Tibet, elsewhere than at the marts shall be at liberty to continue their trade, in accordance with the existing practice, but when so trading or residing they shall remain, as heretofore, amenable to the local jurisdiction. Regulation 10 provides that in cases where officials or traders, en route to and from India or Tibet are robbed of treasure or merchandise, public or private, they shall forthwith report to the police officers, who shall take immediate measures to arrest the robbers, and hand them to the local authorities, and that the local authorities shall bring them to instant trial, and shall also recover and restore the stolen property, but if the robbers flee to places out of the jurisdiction and influence of Tibet, and cannot be arrested, the police and local authorities shall not be held responsible for such losses. Regulation 11 provides that for public safety tanks or stores of kerosene oil or any other combustible or dangerous articles in bulk must be placed far away from inhabited places at the marts, and that British or Indian merchants, wishing to build such tanks or stores, may not do so until, as provided in Regulation 2, they have made application for a

suitable site. Regulation 12 provides that British subjects shall be at liberty to deal in kind or in money, to sell their goods to whomsoever they please, to purchase native commodities from whomsoever they please, to hire transport of any kind, and to conduct in general their business transactions in conformity with local usage and without any vexatious restrictions or oppressive exactions whatever; that it being the duty of the police and local authorities to afford efficient protection at all times to the persons and property of the British subjects at the marts, and along the routes to the marts China engages to arrange effective police measures at the marts and along the routes to the marts; that on due fulfilment of these arrangements, Great Britain undertakes to withdraw the Trade Agents' guards at the marts and to station no troops in Tibet so as to remove all cause for suspicion and disturbance among the inhabitants; that the Chinese authorities will not prevent the British Trade Agents holding personal intercourse and correspondence with the Tibetan officers and people; and that Tibetan subjects trading, travelling or residing in India shall receive equal advantages to those accorded by this Regulation to British subjects in Tibet. Regulation 13 provides that the present Regulations shall be in force for a period of ten years reckoned from the date of signature by the representatives; but if no demand for revision be made on either side within six months after the end of the first ten years, then the Regulations shall remain in force for another ten years, from the end of the first ten years; and so it shall be at the end of each successive ten years.[11]

§ 9. *The Status of the Treaty Ports during the China-Japan War and the Opening of New Treaty Ports by the Treaty of Shimonoseki and the other Compacts between China and Japan.*

During the China-Japan War proclamations and Imperial Decree were issued by the Chinese Government and other measures were adopted by it for the protection of foreigners living in treaty ports and other places in the Empire. Before the declaration of war the Japanese Government succeeded in securing the consent of the United States Government to allow its Minister at Peking to act as "custodian Japanese Legation and afford friendly offices for protection Japanese subjects in China," either directly or through consuls

[11] *Parliamentary Papers*, 1909, vol. cv, pp. 81–86.

acting under his instructions. To this the Chinese Government gave its consent, and on August 29, 1894, Mr. Gresham, Secretary of State, instructed Mr. Denby, Jr., American Chargé d'Affaires *ad interim* at Peking, as follows:

The function with which you are thus charged, with the consent of the Government to which you are accredited, is one that calls for the exercise of personal judgment and discretion. It is an unofficial, not an official, function. A minister of the United States cannot act officially as the diplomatic representative of another power, such an official relation being prohibited by the Constitution of the United States. But, apart from this fact, the circumstances under which the function in question is to be discharged imply personal and unofficial action. The state of war into which China and Japan have entered is inconsistent with the continuance of diplomatic intercourse between them. Your position is that of the representative of a neutral power, whose attitude toward the parties to the conflict is that of impartial amity. Your interposition in behalf of the subjects of one of them is not to be considered as an act of partisanship, but as a friendly office performed in accordance with the wishes of both parties. This principle you are constantly to bear in mind, in order that, while doing what you can consistently with international law for the protection of the interests of Japanese subjects in China, you may not compromise our position as a neutral.

Mr. Gresham further instructed Mr. Denby, Jr., on September 18, 1894, that, as the treaties between China and Japan were abrogated by the state of war existing between the two countries, the consuls of the one country no longer exercised the powers and the qualified jurisdictional intervention with which they were invested by the treaties in the territory of the other in time of peace; and then he added:

The Japanese Government, therefore, in the first article of the Imperial Ordinance (promulgated at Tokio on August 4), declares that Chinese subjects in Japan shall be wholly subject to the jurisdiction of Japanese courts. The abrogation of the treaties is necessarily attended with the same effect upon the status of Japanese subjects in China, as upon that of Chinese subjects in Japan; and this Government, as has heretofore been stated, cannot invest Japanese subjects in China, or Chinese subjects in Japan, with an extraterritoriality which they do not possess as the subjects of their own sovereign. The good offices, however, which this Government has granted are to be exercised on all proper occasions and to the full extent allowed by international law.

The Chinese Minister at Washington on the early part of Augusti 1894, having complained that the United States Consul at Shangha, was protecting Japanese spies, the American Legation at Peking was instructed to report immediately and fully. Mr. Denby, Jr., still acting as Chargé d'Affaires *ad interim*, replied that according to the Tsungli Yamen's statement, the prefect of Shanghai saw in the French concession two Japanese spies wearing Chinese clothing, and "securing arrest by the French Consul, plans were found upon them;" that the French Consul delivered them to the United States Consul-General, who refused to give them up without definite instructions of the United States Legation; that on the demand of the Yamen for their delivery, he replied that he could not act until the United States Consul-General had reported. Then he suspended action and requested instructions from the Department of State for reasons which he stated as follows:

> One [reason] was that the exclusive jurisdiction of the Chinese authorities over subjects of a power at war with China, resident in the foreign settlements at Shanghai, was sufficiently in doubt to justify the foreign authorities in demanding proof of guilt and stipulating for a fair trial before giving up such subjects when accused. The custom in time of peace as to foreigners residing in Shanghai, who were subjects of a foreign power having no treaty with China and hence not enjoying the privileges of extraterritoriality, was to be tried when arrested for crime by the 'mixed court', namely a Chinese magistrate sitting with a foreign assessor. The foreigners at Shanghai wished to establish the principle that this procedure should be followed in time of war against subjects of a belligerent power. They were strongly averse to establishing the precedent that China should have exclusive jurisdiction over such persons . . . The second reason for suspending action was stated to be that of humanity.

The Department of State replied on August 29, 1894, that the nature of the protection to be rendered to Japanese in China seemed to be misapprehended; that lending good offices did not invest Japanese with extraterritoriality nor should legation or consulates be made asylum for Japanese who violated local laws or commit belligerent acts; that protection to be exercised unofficially and consistently with neutrality; and that the Consul-General should not have received two Japanese and was not authorized to hold them. Instructions were given to surrender them unconditionally. Mr. Charles Denby, Jr., on September 1, 1894 instructed the American

Consul-General at Shanghai that he had no power to receive and was not authorized to hold the alleged spies, and directed him to deliver them over to the Taotai. On September 3, Mr. Jernigan, the American Consul-General at Shanghai, wrote to Mr. Denby, Jr., that he had delivered them over, as instructed. On November 24, Mr. Jernigan cabled to Mr. Edwin F. Uhl of the State Department that "Two Japanese, four weeks' trial. Informed not tortured." After having given them a long trial for so many weeks, they were decapitated at Nanking on October 8, 1894. On November 26, Mr. Jernigan wrote to Mr. Edwin F. Uhl that "although the Chinese authorities have to date refused my request for information of proceedings against the two alleged Japanese spies, I believe that the trial was fully of the duration indicated, and was in conformity to the rules obtaining in Chinese courts. A letter from an intelligent foreigner residing at Nanking, where the two Japanese were executed, discredits the reports of their torture. Other letters from the same gentleman have proved so accurate that I am disposed to accept the reported torture as without substantial proof." [12]

On the early part of August, Mr. Fowler, the American Consul at Ningpo, informed Mr. Denby, Jr., that the Taotai persisted in closing that port to all ships. Mr. Denby, Jr., was of the opinion that, "as Japan, however, has given no pledge not to attack Ningpo, I have telegraphed in reply that this legation 'cannot object to China's necessary defensive measures'."

Notwithstanding the assurance of the Japanese Government that it would regard Shanghai as outside the sphere of its warlike operations, the Chinese Government had partially closed the Huangpu River at Wusung, but a sufficient channel was left unobstructed for all mercantile purposes. This action was justified on the part of the Chinese Government upon the ground that it was the entrance leading up to its Kiang-nan Arsenal, one of its most important sources of military supplies.

The Tsungli Yamen on October 6, 1894 announced that the port of Foochow was closed for purposes of defense. The Wuhu Men or Five Tigers Entrance was left open, and a designated place was specified as an anchorage for foreign and Chinese steamers outside the mouth of the river and here they were allowed to discharge and

[12] *United States Foreign Relations*, 1894, pp. 95–134; Moore, J. B., *Digest of International Law*, vol. iv, pp. 601–611.

load cargo, which must be conveyed to and from the city of Foochow by lighters registered at the customs, which lighters were to follow an indicated route and ply only in the daytime. This note was addressed to the foreign ministers at Peking, and it read:

> Upon the 3d instant (October) the prince and ministers received a telegram from the Viceroy of the Min-Che Provinces, stating that he has now taken measures for the defense of the port of Foochow by establishing a blockade. But the Wuhu Men (Five Tiger Entrance) will be kept open, and Chinese and foreign steamers will be permitted to anchor below Sharp Peak Point, behind Ho-keang Island, and there discharge and load cargo, which must be conveyed by lighters registering at the customs. These boats must ply in and out by the route south of the Nan Kuei Hill (or Island). They are not permitted to run during the night, in order to avoid their being fired on by mistake.

Mr. Denby, Jr., was of opinion that "burdensome to commerce as these regulations will doubtless prove, no objection can be made to them in view of the fact that China's naval force is utterly demoralized and entirely inadequate to the protection of her coast. Foochow is an important naval deport, and must be guarded at all hazards." [13]

On April 17, 1895 a treaty of peace between China and Japan was signed at Shimonoseki. By Article 6 the following Chinese cities, towns, and ports, in addition to those already open, were opened, to the trade, residence, industries, and manufactures of Japanese subjects, under the same conditions, and with the same privileges and facilities as exist at the present open cities, towns, and ports of China: (1) Shashih, in the Province of Hupeh; (2) Chungking, in the Province of Szechuen; (3) Soochow, in the Province of Kiangsu; (4) Hangchow, in the Province of Chekiang. The treaty also provided that the Japanese Government should have the right to station Consuls at any of the above-named places; that steam navigation for vessels under the Japanese flag for the conveyance of passengers and cargo should be extended to the following places: (1) On the Upper Yangtsze River, from Ichang to Chungking; (2) On the Woosung River and the Canal, from Shanghai to Soochow and Hangchow. It further provided that Japanese subjects should be free to engage in all kinds of manufacturing industries in all the

[13] *United States Foreign Relations*, 1894, Appendix I, pp. 54, 55, 58, 71.

open cities, towns and ports of China, and should be at liberty to import into China all kinds of machinery, paying only the stipulated import duties thereon; that all articles manufactured by Japanese subjects in China should, in respect of inland transit and internal taxes, duties, charges, and exactions of all kinds, and also in respect of warehousing and storage facilities in the interior of China, stand upon the same footing and enjoy the same privileges and exemptions as merchandise imported by Japanese subjects into China.

On July 21, 1896, a Treaty of Commerce and Navigation between China and Japan was signed at Peking. By this treaty (Article 3) Japan secured the right to appoint consular officers to reside at the ports, cities, and towns of China which were or might hereafter be opened to foreign residence and trade. It gave (Article 4) Japanese subjects the right to reside and trade in the open ports.

On October 19, 1896 a Protocol was signed between China and Japan respecting Japanese settlements to be possessed exclusively by Japan should be established at the open ports of Shanghai, Tientsin, Amoy and Hankow (Article 3). It also provides that (Article 1) the management of roads and local police authority should be vested solely in the Japanese Consuls.

On October 8, 1903, a Supplementary Treaty of Commerce and Navigation between China and Japan was signed at Shanghai. By this treaty (Article 10) a place of international residence and trade in Peking was to be opened by China itself, and that the regulations relating thereto should be made in due time after consultation. By annexes 6 and 7 to this Article it was agreed between "the High Contracting Parties" that a place in Peking outside of the Inner City should be selected and set apart as a place where merchants of all nationalities might reside and carry on trade; that within the limits of this place merchants of all nationalities should be at liberty to lease land, build houses and warehouses, and establish places of business, but as to the leasing of houses and land belonging to Chinese private individuals there must be willingness on the part of the owners, and the terms thereof must be equitably arranged without any force or compulsion; that all roads and bridges in this place were to be under the jurisdiction and control of China; that foreigners residing in this place were to observe the municipal and police regulations on the same footing as Chinese residents, and they were not to be entitled to establish a municipality and police

of their own within its limits, except with the consent of the Chinese authorities; that when such place of international residence and trade should have been opened and its limits properly defined, the foreigners who had been residing scattered both within and without the city walls, should all be required to remove their residence thereto, and they should not be allowed to remain in separate places and thereby cause inconvenience in the necessary supervision by the Chinese authorities; that the value of the land and buildings held by such foreigners should be agreed upon equitably, and due compensation therefor should be paid; that the period for such removal should be determined in due time, and those who did not remove before the expiry of this period should not be entitled to compensation. It also provides that (Article 10) the Chinese Government agreed to open to foreign trade, within six months from the exchange of the ratifications of this treaty, Changsha, in the Province of Hunan, on the same footing as the ports already opened to foreign trade, and that foreigners residing in this open port were to observe the municipal and police regulations on the same footing as Chinese residents, and they were not entitled to establish a municipality and police of their own within the limits of this treaty port, except with the consent of the Chinese authorities. It finally provided that the Chinese Government agreed that, upon the exchange of the ratifications of this treaty, Mukden and Tatungkow, both in the Province of Shengking, would be opened by China itself as places of international residence and trade, and that the selection of suitable localities to be set apart for international use and occupation, and the regulations for these places set apart for foreign residence and trade, should be agreed upon by the Governments of China and Japan after consultation together. Then Japan agreed to assist China in her judicial reform, so as to bring her judicial system into accord with that of Japan and western nations; and she also promised that she would relinquish her extraterritorial rights when satisfied that the state of the Chinese laws, the arrangements for their administration, and other considerations warranted it in so doing.[14]

§ *10. Rights of Aliens to reside and conduct business at Soochow and Hangchow, outside of the concession limits.*

On July 17, 1897, Mr. T. R. Jernigan, American Consul-General

[14] *United States Foreign Relations*, 1896, pp. 98–99; *ibid.*, 1895, Part I, pp. 199–203; 87 *British and Foreign State Papers*, 799, 804, 1195, 1197; 88 *ibid.*, 473; 96 *ibid.*, 578.

at Shanghai, wrote to Mr. Charles Denby, the American Minister at Peking, that the Chinese authorities at the port of Soochow had issued a proclamation forbidding Chinese to sell land to foreigners outside the concession, and that the Chinese authorities at the port of Hangchow opposed foreigners residing in the native city of Hangchow for purposes of trade. On July 26 Mr. Denby replied:

> You cannot well take up the discussion of the right of an American to buy land in the city of Soochow, but outside of the concession, until an actual case shall arise, but you are instructed as a matter of precaution to protest against the proclamation mentioned, and to claim in general that the city of Soochow and the settlements are all in the area of the port and are all opened to foreign trade, and that land can be bought by foreigners in the city under the treaties.

In the meantime Mr. Denby informed the Tsungli Yamen that he would not consent to the expulsion of Americans from the native city of Hangchow. On July 28, 1897, the Yamen wrote to Mr. Denby informing him that on the 19th of July the Yamen received a communication from the Governor of Chekiang, embodying a report from the Taotais of the Board of Foreign Affairs reading as follows:

> In regard to the American merchant opening a life insurance office at a place called Yu Sheng Kuan Chiang, the office of foreign affairs addressed a communication to the United States Consul requesting that instructions be issued to have the said office removed from the city, but no reply has been received to said communication.
>
> It appears that at Hangchow, in addition to the Japanese settlement, a large tract of land has been set apart at the Hung Chien Bridge as a trading place for foreigners. The land has been filled in, roads made, and the banks of the river repaired. Police have been employed, and the outlay of money has been heavy. This has been done for the purpose of treating foreigners kindly and giving them due protection in carrying on their business. It cannot be said that they have not been treated in a generous and liberal manner.
>
> The said American has established, in violation of treaty, an office in the city of Hangchow.
>
> Of the foreign trading ports in China, Shanghai dates the very earliest. It is situated on the Yang King Pan, and has been opened for over fifty years. It has never been heard of foreign merchants establishing hongs in the city of Shanghai. There is ample proof that foreign hongs have not been established (within the city) at the treaty ports of Chinkiang, Tientsin, and Foochow.

The Yamen argued that the American Minister should issue instructions to have the life insurance office removed from the city of Hangchow on the ground that the foreign settlements were not a dwelling place to both Chinese and foreign merchants, as they were separated in order that peace and quiet should prevail among them, and as a foreign settlement had been marked off and limits defined at a place called Hung Chien Bridge at Hangchow, so it was right that the said life insurance company should open its office within the limits of the said settlement.

On August 30, Mr. Denby, writing to the State Department for instructions, stated that he was informed that the Japanese Government did not regard the Shimonoseki Treaty as conferring on Japanese the right of residence at Hangchow and Soochow beyond the limits of the Japanese concessions; and that England and other powers would acquiesce in the contention of China that foreigners should establish their business premises within the concessions designated for them at those cities. He had not, he said, felt authorized to consent that Americans should be denied the right of residence in the cities open to trade; but it was evidently inadvisable for the legation to insist on privileges under Japanese treaties which the Japanese themselves waived and which were not asserted in behalf of the citizens of the other powers. Unless, therefore, the diplomatic body unites in a demand for unrestricted residence at the above cities, or unless the right of residence should be exercised by citizens of other powers, he should, he said, refrain from further insistence thereon on behalf of citizens of the United States.

The Department of State approved Mr. Denby's position, and in so doing enclosed a copy of an opinion of the Solicitor of the Department, which reads as follows:

Under the most-favored-nation clause of the Treaty of 1858 citizens of the United States are entitled to frequent and reside at any port open to commerce by treaty with any power. The solution of the question, therefore, depends on the construction—on the extent and limitation—of the concession made in the two treaties between Japan and China. By the treaty of peace the concession is limited to the same conditions and with the same privileges and facilities as exist at the present open cities, towns, and ports of China. Mr. Denby says that "the right of residence is allowed in many cities of China." But whether such residence arises by bare license, or as a mere matter of grace, or by strict treaty right, is not shown, and in the absence of

such specific information it does not seem prudent to predicate the construction of the treaty by reference to such fact.

The question seems to be complicated by further provisions in Article 6 of the treaty of peace, not mentioned in the package of correspondence of Mr. Denby. It provides: All treaties between China and Japan having come to an end, in consequence of war, China engages, immediately upon the exchange of the ratifications of this act, to appoint plenipotentiaries to conclude, with the Japanese plenipotentiaries, a treaty of commerce and navigation and a convention to regulate frontier intercourse and trade. The treaties, conventions, and regulations now existing between China and European powers shall serve as a basis for the said treaty and convention between Japan and China. From the date of the exchange of the ratifications of this act until the said treaty and convention are brought into actual operation the Japanese Government, its officials, commerce, navigation, frontier intercourse and trade, industries, ships, and subjects shall in every respect be accorded by China most-favored-nation treatment . . .

It would seem that Article 6 of the treaty of peace, by which the concessions are granted, in effect provides for the making of further rules and regulations in that behalf; and therefore Article 6 is to be constructed in connection with Article 4 of the subsequent treaty of commerce. The first clause of this article grants to Japanese subjects the right to reside and carry on trade in the said city. But the last clause of that article restricts the right to and "within the localities at those places which have already or may hereafter be set apart for the use and occupation of foreigners." Considering together the two treaties between Japan and China, it would seem that the Japanese subjects were clearly intended to be so restricted, since any other construction would make the last clause meaningless. But it may be said that while this restriction might operate against the subjects of Japan, it would not operate against the citizens of the United States, inasmuch as the Treaty of 1858 contains no such restriction, and therefore, whenever such ports are opened by treaty between China and any other nation, the concession takes place under the Treaty of 1858 in an unrestricted form.

But is that a fair and reasonable construction?

Clause 1 of Article 6 of the treaty of peace grants to Japanese subjects the treatment of the most-favored-nation. And this article stipulates expressly for the future conclusion between the contracting parties of a treaty of commerce and navigation, the basis of which should be the treaties, conventions, and regulations now subsisting between China and European powers, and stipulates *ad interim* for the most-favored-nation treatment of Japanese subjects. Did Japan, therefore, in the final treaty—in the treaty of commerce and navigation—surrender the most-favored-nation treatment which she obtained by the treaty of peace? If she did not (and it is presumed that she did not), then other nations, under the most-favored-nation clause,

take the concessions subject to the same restrictions as Japan. If, on the other hand, they take without restrictions, then Japan also enjoys without restrictions; which would render meaningless the last clause of Article 4 of the treaty of commerce If, however, Japan is bound by the restriction made in said article, it would seem that the delimitation of the concession to Japan measures and delimits it to other nations.

The contention that the said last clause is merely cumulative would seem inadmissible, since it violates a leading canon of construction, that the instrument be so construed as that all parts of it shall have a meaning; which would be the case if the last clause simply qualifies and restricts the generality of the preceding grant.

The motive for the provision exists in reasons of domestic policy, thus making the Chinese contention an apparently reasonable one.[15]

§ *11. Treaty Ports on the West River and the Opening of Momein or Shunning and Ssumao to Foreign Trade.*

An Agreement between China and Great Britain modifying the Convention of March 1, 1894, relative to Burmah and China, was signed at Peking on February 4, 1897. By a special article it was provided that Wuchow-fu, in Kwangsi; and Shamshui and Kong Kun Market, in Kwangtung; should be opened as Treaty Ports and Consular Stations, with freedom of navigation for steamers between Shamshui and Wuchow and Hongkong and Canton, by a route from each of these latter places to be selected and notified by the Imperial Maritime Customs. It was further provided that four places should be established as ports of call for goods and passengers, under the same Regulations as the ports of call on the Yangtsze River, namely, Kongmoon, Komchuk, Shiuhing, and Takhing.

An agreement for the opening of Nanning, in Kwangsi, is embodied in the following communication dated February 4, 1897, from the Tsungli Yamen to Sir C. MacDonald, the British diplomatic representative: "The negotiations regarding the Agreement modifying the Burmah-China Frontier and Trade Convention of the 1st of March, 1894, and the Special Article opening the West River to trade having now been concluded, it has been agreed that if hereafter trade develops, and it is mutually found that the interests of trade justify it, China will at once open Nanning-fu as a Treaty Port and Consular Station." By Article 13 of the Agreement of February 4, 1897, it is provided that the Government of Great

[15] *United States Foreign Relations*, 1897, pp. 69–80.

Britain may station a Consul at Momein or Shunning-fu (Momein or what is usually called Tengyueh was selected) and also at Ssumao; that British subjects and persons under British protection may establish themselves, and trade at these two places, under the same conditions as at the treaty ports in China; and that the consuls appointed as above shall be on the same footing as regards correspondence and intercourse with Chinese officials as the British Consuls at the treaty ports.[16]

§ *12. The Problem of Extension in the Shanghai Settlements.*

In the early part of 1898 the French Municipal Council at Shanghai notified the native authorities that it was their intention to efface the existence of what was known as the Ningpo Joss House near the Rue du Consulat, but the notification was disregarded. Early on Saturday, July 16, 1898, a landing party from the French cruiser *l'Eclaireur* marched up to the Joss House and took possession, on behalf of the French municipality, of the vacant piece of ground opposite the building. The French municipality, supported by Count de Bezaure, the Consul-General, acted on the principle that if a foreigner requires land in the concession belonging to Chinese, he has the right to buy it, if he is prepared to pay the owners the assessed value. The land in question was wanted for a school, a hospital, and possibly an abattoir. Commencing at six o'clock in the morning a large gang of men in the employ of the French municipality entered upon the work of demolition. It was then that the natives realized that earnestness was the keystone of the Frenchmen's action, and large and angry crowds of Chinese gathered vituperating, and questioning the foreigners' right to interfere with their ancient sages. During the day nothing more serious occurred than the hurling of stones; but, the next evening, about 8 o'clock, the mob made a raid on the police station at Namtao and succeeded in pulling down portions of the wall. Things reached such a pass, the rioters throwing stones and arming themselves with bamboos, that the French sailors fired on the mob, four or five being killed and several wounded. Subsequently the mob was again fired on with fatal results it being estimated that altogether some fifteen lost their lives in addition to many wounded. This condition of affairs lasted only a few hours and in the afternoon order was again restored.

[16] *Parliamentary Paper*, Treaty Series, No. 7 (1897).

It must be remembered that the French contention was dealt with in the settlement between the Chinese Government and the French Minister at Peking, in 1878, of the claims arising out of the riot over the Ningpo Joss House in 1874. By this agreement an indemnity of Tls. 7,000 was paid by the French to the families of the Chinese who were killed on that occasion, and it was solemnly agreed that the Guild should remain in undisturbed possession of their land forever. The Agreement also expressly declared:

> It is hereby further agreed that the cemetery and house property of the Ningpo Joss House shall be forever under the management of the members of the Ningpo community, free from all questions of their being removed. Within the premises of the cemetery no road or drain shall ever be proposed to be made nor shall house building or planting of plants of any kind be ever allowed so as to protect the buried coffins from being injured. The French Consul-General shall instruct "through the Municipal Council" the police to give protection to the Joss House so that benevolent matters may be promoted and friendly relations be thereby cultivated.

In the face of such agreement, undoubtedly the French had violated their solemn promise, and it is difficult to find any other solution of the whole matter than for the French authorities to withdraw from that aggressive action. In an editorial of December 19, 1898, the *North-China Herald* of Shanghai said:

> We have consistently sympathized with M. de Bezaure's (French Consul-General at Shanghai) attempt to make the property known as the Ningpo Joss House of the greatest value to the French Settlement, for the benefit of natives as well as foreigners, by making roads and building institutions for the Chinese on the disused cemetery; but when the Taotai brought forward the formal and final agreement made twenty years ago by the French Minister at Peking, there was nothing more to be said; and we cannot understand why M. de Bezaure did not then gracefully withdraw from what had become—by no fault of his—an untenable position . . . It seems, therefore, a mistake to base a claim for the extension of the French Settlement on the Ningpo Joss House affair, and to make that claim a preposterous one in extent, so that it does not enlist the sympathies of other Powers, who also entirely object to any expansion of the exclusive jurisdiction which the French enforce in the Settlement they have now, and have been allowed to enforce although it has no foundation in right. M. de Bezaure cannot get any adequate force to coerce the Viceroy (Liu of Nanking). We do not know the reason, but we do know that no one knows better than the French Admiral now on this station that the French are entirely in the wrong in the Ningpo

Joss House matter. It is very certain that the lay element, the commercial element, in the French colony has no desire for the particular form of extension that M. de Bezaure has been demanding; that we get the key when we notice that while there are no French commercial interests at Pootung or in the suburb between the native city and the river, the religious societies have very large interests in these districts. It is an old complaint in China that there is a great deal too much that is political about the Roman Catholic propaganda in China; and the dislike in the interior to the Roman Catholic Christians is not entirely due to dislike of the religious side of the work done by the Roman Catholic organization . . .

Prior to the demand of the French Consul-General for the extension of the French concession at Shanghai, the French authorities had some conflict with the British consular and diplomatic representatives in China. In that year, in the case of the three lots situated in the French Settlement held by Thomas Hanbury, a British subject, under title deeds issued by the Shanghai Taotai in 1861 and registered in the British Consulate, the French Consul, on inspecting the deeds, pronounced them to be irregular on the ground that they were not registered in his Consulate in accordance with the principle of *locus regit actum* in international law. Mr. Hanbury, through his agents, refused to register his land in the French Consulate, and this refusal was upheld by the British Minister at Peking. Consequently, when the French authorities asked the Chinese Government later in the same year for an extension of the French Settlement in Shanghai, the British Government, evidently having this case still fresh in memory, openly opposed the proposition and bent all its energies to defeat it. The British Government, however, ultimately withdrew its opposition to the French demand on the condition that the French Minister had agreed to forward, and had forwarded, to the French Consul-General at Shanghai the following instructions:

1. All deeds to British property are to be registered in the British Consulate.
2. All municipal regulations are to be submitted for the approval of the British Minister at Peking before they can be enforced on British subjects.
3. All titles to British property which are declared in order by the British Consul-General are to be considered so by the French authorities.

This question remained unsettled until 1900, when, on January 27, the Taotai of Shanghai issued the following proclamation in reference to the extension of the French concession:

On the 14th day of the 3rd moon of the 29th year of Tao Kuang (6th April, 1849) were determined, after a mutual understanding, by the Taotai Lin, the regulations relative to the Concession situated to the south of the Yangkingpang. Since then this site consecrated to foreign trade has become day by day more flourishing and populous.

On the 25th day of the 9th moon of the 11th year of Hsien Feng (29th October, 1861) the Taotai Wu, in accord with M. Aidan, then Consul-General of France at Shanghai, extended the French Concession up to the creek of the Little East Gate.

Later, on the 13th day of the 2nd moon of the 24th year of Kuang Hsu (14th March, 1898) the Taotai Tsai, then in charge, received from M. de Bezaure, Consul-General of France at Shanghai, an official demand for an extension of the French Concession. The discussion that ensued came to no result.

Now, I have myself, after my entry on office as Taotai, been advised by H. E. Liu, Grand Commissioner of the Southern Ports and Viceroy of the Two Kiang, that he had delegated to come to Shanghai to collaborate under my direction in the regulation of the extension of the Concession, Mr. Ferguson, Assistant for Foreign Affairs, and Mr. Yu, officer of his staff. Considering that the continual development of trade at Shanghai had rendered the French Concession insufficient, I invited the two delegates, as was proper, to discuss and examine the extension. With the assistance of Messrs. Ferguson and Yu, I have come to an agreement with M. de Bezaure, Consul-General of France, and the determination of the four boundaries of the extension is a settled matter . . .

By the present proclamation we make it known to all, that from now—with the exception of the temples built by Imperial Order, the sites belonging to the Chinese Government, the foreign cemetery, which remains as before International, and the road giving access to it, which will not be under the jurisdiction of the Municipal Council of the French Concession—all other questions will be entirely subject to the established regulations . . .

The limits of the extension of the French Concession are: On the east: the City Moat. On the west: the place called Koukiatche and the creek of Kuantimiao. On the south: the bridge of Tingkongkiao, the creek of Yenkongmiao, and the creek called Tatiepang. On the north: the creek of Peitehangpang or the boundary of the International Settlement.

A petition was sent to Peking in 1899 praying for a greatly enlarged boundary for the International Settlement at Shanghai, and this had the support of the consular body and also of the Chinese local officials and gentry, and after some delay the matter was finally referred to the Viceroy at Nanking for settlement. The

extension which was asked for had been granted, and the new territory was actively surveyed by the municipal council for the construction of roads and other public works. The exact boundary of the International Settlement now is: On the north: the Soochow Creek from the Hsiao Sha Ferry to a point about seventy yards west of entrance thereinto of the Defence Creek, thence in a northerly direction to the Shanghai-Paoshan boundary, thence following this boundary to the point where it meets the mouth of the Kukapang. On the east: the Whampoo River from the mouth of the Kukapang to the mouth of Yangkingpang. On the south: the Yangkingpang from its mouth to the entrance thereinto of the Defence Creek, thence in a westerly direction following the line of the northern branch of the Great Western Road, to the Temple of Agriculture in the rear of the Bubbling Well village. On the west: from the Temple of Agriculture in a northerly direction to the Hsiao Sha Ferry on the Soochow Creek.

Mr. E. H. Conger, the American Minister at Peking, wrote to Mr. John Hay, Secretary of State, on July 5, 1899, that it was also agreed in the concession for the extension that foreigners might own property, and that the municipality might exercise authority over roads, police, sanitation, lighting in the Paoshan district, extending as far as and including Wosung.[17]

§ *13. Japanese Concession at Amoy.*

The American Minister at Peking was informed by the Tsungli Yamen in March, 1899, that negotiations with Japan for a settlement at Amoy were begun some two years before. It seems that the United States Consul at Amoy had been instructed to inquire of the local authorities as to whether the Chinese Government would make a similar concession for securing an American settlement, although it was the intention of the United States Government only to remonstrate against discrimination and interference with American interests.

On December 9, 1899, Mr. Conger advised the Department of State, that he had received a final report from Mr. Johnson, the American Consul at Amoy, upon the Japanese concession, and that

[17] *Parliamentary Papers*, China, No. 1 (1899), pp. 224–267, 330–341; *ibid.*, China, No. 1 (1900), pp. 191–194; *North-China Herald*, November 7, 1898, July 25, 1898, July 18, 1898, December 19, 1898, February 21, 1900; *United States Foreign Relations*, 1899, pp. 143–150, 279–283.

no effort was being made to obtain an international foreign settlement, nor to secure to American interests privileges equivalent to those granted to Japan. In closing his note, Mr. Conger said: "The few Americans there do not need such a concession, nor could they afford the expense of controlling and keeping it up."

The Agreement between China and Japan provided that the area of the Japanese Concession should be 40,000 ken (one ken equals six feet); and that the houses owned by individuals within the concession were to be purchased by the Japanese, when wanted, at a price to be agreed upon with the Chinese commercial committee.

In his final report upon this concession to Mr. Conger, Mr. A. Burlingame Johnson, the American Consul at Amoy, said: "The ground included in the concession is not only very limited in area, but is far from being conspicuous on account of its desirability. It has been kept within the limits suggested to me by the Japanese Consul at the time I remonstrated against the granting of the large area first surveyed by the Japanese and Chinese officials, which facts have been fully reported by me." [18]

§ *14. Regulations to be Applied in any Future Extension of the British or French Concession at Hankow.*

On December 22, 1899, the British Foreign Office, writing to M. Paul Cambon, the French Ambassador at London, respecting the Regulations to be applied in any future extension of the French Concession at Hankow, stated that in the event of any extension of the French Concession at Hankow being subsequently obtained, the following conditions as regards British property therein would be strictly observed:

1. All deeds applying to British property to be registered in the British Consulate.
2. All Municipal Regulations to be submitted to Her Majesty's Minister at Peking before they can be enforced on British subjects.
3. All titles to British property which are declared in order by the British Consul-General are to be so considered by the French authorities.

Then the note stated that:

With respect to the British claims to land situated in the present French Concession, which are believed to be four in number, and all of which are represented by Mr. Greaves, of Hankow, as it is understood that the validity

[18] *United States Foreign Relations*, 1899, pp. 150–154.

of the titles is questioned by the French authorities, Her Majesty's Government consent to the question being referred to the British and French Consuls-General at Shanghai, and failing an agreement being arrived at by them, to an arbitrator, by whom the matter would be decided in accordance with precedent and local usage.

On January 15, 1900, M. Cambon, the French Ambassador, acknowledging the receipt of the note, stated:

Mon Gouvernement, à qui je n'avais pas manqué de l'adresser, me charge de vous faire savoir qu'il donne son adhésion aux quatre points résumés dans ce document. Il demeure, du reste, bien entendu entre les deux Gouvernements que, dans le cas où la Concession Britannique recevrait un agrandissement par la suite, les conditions ciaprès éconcées seraient appliquées en ce qui concerne les terrains appartenant à des Français et se trouvant situés dans la zone qui serait englobée dans la Concession Anglaise:

1. Tous actes s'appliquant à des propriétés Françaises seraient enregistrés au Consulat de France.

2. Tous les Règlements Municipaux seraient soumis au Ministre de France à Pékin, avant de pouvoir être appliqués à des citoyens Français.

3. Tous les titres des propriétés appartenant à des Français reconnus valuables par le Consul de France seraient acceptés comme tels par les autorités Britanniques.[19]

§ *15. The Situation of the Treaty Ports during the Boxer Rebellion.*

During the Boxer Rebellion efforts were made from the very beginning to restrict the field of operations to Peking and Tientsin, and the Consular Body in the Treaty Ports of Central and South China was instrumental in bringing about this result. In Shanghai the condition was not very favorable. The situation at Peking and the fighting in and about Tientsin had absolutely stopped all trade. This, together with the fact of the stoppage of the steamboat lines and the shutting down of the cotton mills, had caused many to become apprehensive that the eight foreign gunboats at Shanghai might attack the town, or that the unemployed Chinese might riot for the sake of loot; and in consequence, thousands of Chinese were leaving the city daily. In order to allay this feeling the Consular Body issued the following proclamation:

Owing to the troubles in the north, many rumors have been circulated in Shanghai which have unsettled the minds of the people. In their ignorance of the true state of affairs they have frightened themselves and each other,

[19] Hertslet's *China Treaties*, vol. i, pp. 589–591.

and in fleeing homeward from Shanghai have in many cases fallen a prey to robbers.

We, the Consular Body at Shanghai, have consulted with the Chinese authorities regarding the protection of life and property in this neighborhood and have agreed to act in cooperation in putting down any disturbances that may occur. The Municipal Council holds the volunteer corps in readiness for the protection of the foreign Settlement, and our warships have taken up their positions in the river for the same purpose, and for that alone.

With such precautions, both on shore and afloat, and with the cordial co-operation of the Chinese authorities, there is no reason why the troubles in the North need spread into these parts. There is no cause for alarm, and we hereby give notice to all that the presence of the foreign men-of-war in the river is only a measure of precaution for the protection of the Settlement, and that there is no foundation of truth in the idle rumors with which many persons are now exciting themselves.

It was necessary above all to obtain the assistance of the Viceroys, Governors and Taotais if peace in the treaty ports and other cities of Central and South China was to be preserved. As a result of further negotiation, Li Hung-chang, the Acting Viceroy of the Two Kwangs; Liu Kun-yi, Viceroy of Kiangsu Kiangsi, and Anhui; Chang Chihtung, Viceroy of Hunan and Hupeh; Yuan Shih-kai, Governor of Shantung; Wang Chih-chun, Governor of Anhui; and Yu Lien-san, Governor of Hunan, and the Taotais of the various treaty ports, united in a single plan for the protection of foreigners' life and property. The Governor of Chekiang was for sometime uncertain what to do, as he had already published Prince Tuan's edict to the people calling for active participation against the foreign powers; but on July 5 he notified the American Consul that he would protect foreigners, no matter what might happen at the North, and that he would join the Yangtze Viceroys in their plans. Thus he came around in due time. Liu Kun-yi, Viceroy of Kiangsi, Kiangsu and Anhui, was at this time seventy-seven years old, having for thirty-five years served in this high official rank. He was then regarded as the leader of the Hunanese, the most warlike of the provinces in Central China. Having been summoned to Peking for an Imperial audience, he had the rare courage to tell the Empress Dowager in outspoken terms that her reactionary policy meant the ruin of China. In spite of this and of his active antagonism to Prince Tuan, Kang Yi and the other leaders of the reactionaries, who were trying their utmost to secure his removal from office, he was too firmly

established in the friendship of the Empress Dowager, so he was permitted to resume his duties at Nanking. He was instrumental in arranging the league of the Viceroys in South and Central China, which was now responding so favorably to the views of the Foreign Ministers and Consuls. More than that he associated himself at the capital with the liberals, in opposition to the reactionaries. That the unfortunate Rebellion did not spread throughout the Empire was due to these half-dozen Viceroys and Governors, who saw beyond the events of the moment, and were not blinded by hate or prejudice in their views as to what was best for China and the Chinese.

On July 3, the Viceroys of Kiangsu, Kiangsi, Anhui, Hunan and Hupeh made the following definite pledge: "We the Viceroys of the Liang Kiang and Liang Hu Provinces, undertake to hold ourselves responsible for the security of foreign life and property within our respective jurisdictions, as well as in the province of Chekiang, so long as the Treaty Powers do not land troops in either the Yang-tse Valley or the Province of Chekiang." [20]

§ *16. The Proposed Extension of Foreign Settlements in Tientsin and the 'Grab Game' Policy.*

In the early part of June, 1900, Tientsin was the military headquarters of the allied forces, and various relief expeditions were despatched from that port. Consequently, the Boxers began in the middle of the month to start fires in many directions and made an attempt to enter the foreign settlement, but they were repulsed with heavy loss of life.

There was a military college in a fortified position within 300 yards of the settlement and 600 yards from the American Consulate. This position was occupied by 200 military students, well armed and drilled, and who had at their command eight large Krupp guns. The opinion of the military expert of the time was that had they opened fire, the foreign concession would have been riddled and perhaps captured. The allied forces, however, obtained an advantage by attacking this strategic point without giving these students further opportunity for preparations for defense, and after some fighting the position and guns were captured.

[20] *United States Foreign Relations*, 1900, pp. 248–277; *Parliamentary Paper*, China, No. 3 (1900), 128, 130, 135, 137, 140, 153, 161, 162, 164, 165, 166, 168, 172, 177, 179, 194–196, 198, 199, 204–205, 222, 226, 240, 244, 249, 251, 261, 262, 270–271.

Two days previously the Russians had landed about 1,700 troops, with one 6-gun battery, so that at the time the siege began the Allied forces numbered approximately 2,500 troops in defensing a position of some ten miles in length. It had been previously arranged in the event of an attack, all women and children should assemble at Gordon City Hall, a very large and substantial building near the center of the settlement.

On the 22nd, some 200 United States Marines, accompanied by 300 Russians, attempted to enter the city, from the railroad, but when within two miles of their destination were ambushed and compelled to retreat, as the Boxers were surrounding them on three sides. However, they were reinforced with 1,500 new troops, and on the 24th they succeeded in driving the Boxers into the walled city, thus leaving communication with Taku unobstructed.

On the 13th of July, the allied forces began to attack the walled city, and after nightfall the Japanese drew near the south gate and finally succeeded in blowing it open, when they entered with a rush, and the Boxers were forced to retreat. On the next day the city was divided up into districts, the United States troops occupying the position immediately in front of their line the previous day, in which was located a large armory containing immense stores of arms and munitions of war. They also had control of the salt commissioners' yamen, where they found a million dollars' worth, or more, of silver bullion. The Japanese and English each found as much more in various locations. So ended the twenty-nine days of siege, during which time there was not an hour that people did not hear the shriek of shells or the whistle of bullets.[21]

With the capture of the city, the allied forces remained in possession even after the fall of Peking. The symptom of ulterior motives of the European Governments became visible about the middle of November, 1900. On December 31, 1900, Mr. E. H. Conger, the American Minister at Peking, "confirmed" his previous telegraphic reports to the Department of State that the powers were seeking permanent extensions to the concessions which they already occupied. Conger regarded this action as a dangerous precedent, and added his opinion that "all extensions of foreign settlements should be international," and that "all settlements at

[21] *Parliamentary Paper*, China, No. 3, (1900), 206, 219, 227; *United States Foreign Relations*, 1900, pp. 268–273.

the treaty ports should be international." As Russia had started the fracas, Conger directed Mr. Ragsdale, the United States Consul at Tientsin, to enter "a protest," while he himself prepared to remonstrate with the Russian Minister at Peking. These proposed extensions of the Russians and Belgians, and those later demanded by the German, French, Austrian, and Japanese, were denounced by the American Minister as a "grab game" which "was neither fair nor consistent," as it "is in violation of their publicly declared intentions" that "the several armies came here, as they have all declared, for a general purpose, and not to gain any special advantage for individual governments." It may be remarked in passing that throughout this critical period of Chinese history, Mr. Conger was an able exponent of the American policy, as followed from the beginning and elaborated by Secretary John Hay, of friendship for and justice to China, and of altruistic protection of American and Chinese interests, especially at this time when China was practically friendless and knew not what to do or where to turn. However, in this matter of extension, the American Minister admitted that, "since there are so many regularly established concessions at Tientsin, an international one is hardly to be expected," but he contended that "all action in relation to securing new or extending old concessions should be deferred until order is restored, the Chinese Government reestablished, and the rights and interests of all can be considered."

As to the policy which the United States should follow, Mr. Conger proposed:

> It would be advantageous to us in many ways to have an American Concession at Tientsin, but we have learned by experience that it takes both money and citizens to own and operate a concession. We have not enough there of either. The Department is familiar with our former efforts to sustain the desirable concession which had to be abandoned in 1896. If, however, the United States Government can in any way take upon itself part of the burden, as the other governments do, it may be advisable for us to demand consideration of our rights to a concession while the others are taking and dividing up all available territory . . .

The *Russian Circular* announcing the occupation of the left bank of the Peiho River, opposite the foreign concessions already established at Tientsin, appeared on November 6, 1900. This Russian State Paper announced:

Since the 17th of June last the Imperial Chinese troops have joined the rioters (Boxers) who attacked the Foreign Concessions and the railway station occupied by the Russian troops, and that on the 23d of June the Russian reenforcements, which came to raise the blockade, swept the left bank of the Peiho from below the railway station up to the petroleum godown of Messrs. Meyers & Co., and have established themselves there by right of conquest in having taken possession by force of arms and at the price of Russian blood spilled, in order to prevent the Chinese from returning to resume the firing. His excellency (Lieutenant-General Linevitch, Commander-in-Chief of the Russian expeditionary force in Chili) considers all this tract of land included in that from above the railway station to the petroleum godown as having become the property of the Russian troops on the 23rd of June by act of war. The Russian flags have been planted, and notice posted upon boards in many places within this territory, which has been occupied and protected by the Russian military authorities. Therefore his excellency cannot and will not recognize, except by his special authorization, any concession whatever of this territory of which he has taken entire and complete possession. It is understood that the rights of those landowners (other than Chinese) whose titles have been duly registered in foreign names before June 17 will be safeguarded.

Belgium likewise grabbed all in sight that was possible for so small a nation; and in a notice addressed to the consuls of the other nations at Tientsin dated November 7, 1900, the Belgian Consul said:

I have the honor to inform you that in accordance with instructions from His Belgian Majesty's Legation at Peking, I have this day occupied the territory situated opposite the foot of the German Concession and extending along the river to a point about 50 meters below the petroleum godown of Messrs. H. Meyers & Co., thence to another point about a kilometer lower down. The ground is bounded on the sides by two straight lines, is limited on the inside by the railway, beginning from the railway crossing, about 1¾ kilometers from the mud wall up to another point distant about 1¼ kilometers, equally distant from the point of intersection of the road and the above railroad. The Belgian flag has been planted upon the territory and its limits marked. I have, therefore, the honor to inform you that every sale, cession, or transfer of property within these limits cannot and will not be recognized as legal. It is understood that titles in the names of Europeans (other than Chinese) which have been duly registered prior to taking over of this territory will be safeguarded.

M. G. du Chaylard, the French Consul-General at Tientsin, on November 20, published a *French Circular* announcing the occupa-

tion of certain territory at Tientsin in addition to its former concession. This typical French document announced:

The Consul-General of France, President of the Municipal Council, wishing to warn foreign residents against the consequences they would expose themselves to by buying ground in the quarter presently annexed to the French Concession, has the honor to inform them that the Municipal Council will not recognize as valid any contract subsequent to June 17, the date on which hostilities began. All land-holders, bearers of regular titles issued before the 17th of June, are requested to exhibit them at the French Consulate, where they shall be duly verified and registered. The extension of the concession includes all the grounds as follows: First, between the Rue de Paris, the Taku Road, the Quai de France, extended as far as the old building of the London Mission in the Chinese city. Second, the zone situated west of the French Concession and limited by the Taku Road, the extra British Concession, the mud wall, and a line running from the said wall and abutting on the river in front of the London Mission building.

On November 28, 1900, the Austrian Minister at Peking wrote to Mr. Conger that he was informed that several powers had recently occupied tracts of land at Tientsin upon which to establish settlements or to increase those which they already possessed, consequently the Austrian Ministry of Foreign Affairs had directed him to communicate the following declaration to the plenipotentiaries of the foreign powers at Peking:

In order to be able to effectually protect our interests in commerce and navigation, the Imperial and Royal Government considers it necessary, after the restoration of order in China, to establish a consulate at Tientsin, and it will require for this purpose a settlement like the others already have.

For this purpose the Imperial and Royal Government has decided to exact from the Chinese Government, in the course of the next negotiations, a suitable tract.

In view of the recent occupations of Tientsin, the Imperial and Royal Government desires now to advise in advance the foreign representatives at Peking of this intention, in order to preserve an equity of rights with the other powers and to secure itself against any prejudice in the question of settlements or concessions of land.

The Italian Minister at Peking followed suit, and on December 1, 1900, he notified the foreign representatives at Peking that he was instructed by the Italian Minister of Foreign Affairs to publish the following notification:

In order to effectually protect our commercial and shipping interests, the Royal Government may consider it necessary to establish a consulate at Tientsin, and consequently a settlement, such as the other powers already have.

In order to do so, the Royal Government may consider it necessary to demand of the Chinese Government, in the course of future negotiations, a suitable location.

With reference to the recent occupations at Tientsin, I beg to inform the foreign representatives of this contingency, in order to reserve to the Royal Government equal rights, without prejudice, with the other powers, in the matter of settlements of concessions.

The next country which announced its 'grab game' policy was Japan. On December 28, 1900, a notice was published by the Japanese Consul at Tientsin to the effect that, in order to prevent the possible confounding of the right of ownership of land and premises within the limit of the Japanese settlement, he would not recognize the validity of any transfer of right of ownership of land or premises within the following limits, made after June 17, "the day of opening of hostilities," or those transfers which, although made before the above date, had not been duly verified by the Chinese authorities at the time of such transfer. The limits of the Japanese settlement were thus defined:

North: From a point 600 feet westward of the Nanmen (the south gate) to Chiakao, along the ditch outside the Tientsin city wall.

Northeast: From Chiakao to the northeastern boundary of the French Settlement along the Peiho.

East: The boundary line between the French and Japanese Concessions.

South: The mud wall.

West: The straight line drawn from the point 600 feet westward of the Nanmen (the south gate) to the point 450 feet westward of the Haikwanmen (mud-wall gate near the Haikwansu).

On April 18, 1901, Herr Alfred Zimmermann, the German Consul-General at Tientsin, published the following notification:

By order of the Imperial German Legation at Peking, I have the honor to inform you that, with the consent of the Chinese authorities, the German Concession at Tientsin has been enlarged on the west to the Taku Road, on the south to the boundary within the limits which are marked in green on the plan herewith.

I beg to add that it is well understood that foreigners who hold prior regular titles are safeguarded.

The position of the United States was a very unpleasant one, and "as guardian of Chinese territorial integrity, soon had its hands full, and, rather to its regret, was forced to take a seemingly inconsistent stand," which requires careful explanation in order to be understood in the right light. Mr. Conger, the American Minister at Peking, on February 26, 1901, telegraphed to Mr. Hay that, notwithstanding his protests, all territory at Tientsin available for concessions, except a small tract formerly constituting the United States concession, had been seized by the land-hungry powers, and that he had instructed the United States Consul, Mr. Ragsdale, to serve notice that that tract must be left for part of an international settlement or a United States Concession, which "will be demanded when order is restored, and that the United States will not recognize seizure or adverse occupation." Taking the circumstances into consideration, this course was then considered as the wisest, and was approved by Mr. Hay in a telegram to Mr. Conger dated February 27, 1901.

The American Concession at Tientsin, which was referred to by Mr. Conger in his cable of February 26, 1901, was one of three tracts of land laid out at Tientsin in 1869, one for England, another for France, and the third for the United States. For some years the United States authorities exercised in a way jurisdiction over the grant, but on October 12, 1880, the concession was relegated to its "former status (meaning back to China) with the understanding that if at some future time it shall become desirable to establish suitable municipal regulations therein it shall be competent for the consular authorities to do so." The Taotai of Tientsin on October 14, 1880, acknowledged the receipt of the despatch sent him by the American Consul, and stated that if any American Consul in the future should "desire to have the settlement revert to the present system of administration he must first arrange with the Customs Taotai as to the mode of administration, and if there be nothing objectionable in the same there should be nothing to prevent the settlement from reverting to the original Government." Later in 1896 a movement was on foot to cede this territory to the Germans, against which action a protest was filed and correspondence in relation thereto with the State Department followed, and finally on April 2, 1896, the American Minister at Peking advised that all jurisdiction over the property be abandoned, and on June 25 in-

structed the American Consul at Tientsin to inform the Taotai to that effect.

On February 24, 1901, Minister Conger made the first definite announcement of the American policy in his letter to Mr. Ragsdale, American Consul at Tientsin:

> As you are already fully aware, it is against the declared policy of our Government to in any way make the present military movement in China a pretext for seizing or obtaining territory; and it is for this reason that I have instructed you to make the protests which you have made against the seizures by other powers.
>
> But in order that we may prevent every possible place being occupied by others, so that if the Government desires to apply for a concession after order is restored, we may be able to reoccupy at least the small tract that was formerly the United States Concession, or, preferably, have it included in an International Settlement, and still be consistent with the position we have already taken, you may send the inclosed, in the form of a note from yourself, to each of your colleagues.
>
> If there is likely to be any doubt about the limits of the tract, you might, if necessary, set out the boundaries in addition to saying it is "known as the United States Concession."

On receipt of this instruction, Mr. Ragsdale served the following notice on the foreign consuls at Tientsin relative to the preservation of the tract of land known as the United States Concession in Tientsin:

> For the purpose of preserving the tract of land known as the United States Concession in Tientsin, to be with other tracts organized into an International Settlement if possible, but, if not, then at the proper time whenever it may legally be done, to be reoccupied as a United States Concession, the undersigned, by direction of the United States Legation at Peking hereby serves this formal notice of such intention on the part of his Government, and requests that it be in every way respected. No adverse seizure or occupancy of any part of this tract can be recognized or allowed.

Although this tract of land was temporarily under the jurisdiction of the United States authorities in the hope that it could be converted into an international settlement, yet the United States seemed disinclined to appropriate it. All the powers with the exception of Great Britain were unwilling to accept this arrangement, so the only way left was to come to terms with Great Britain. Immediate action was imperative, as this 'no man's land' was

rapidly filling up with bad characters on account of the inadequate and inefficient control of the police.

On July 24, 1901, Sir Ernest Satow, British Minister at Peking, wrote to Mr. H. G. Squiers of the United States Legation that he would accept the arrangement for assuming control of 'no man's land' by the municipality of the British 'Extra' Concession on the following conditions:

1. The United States Government to reserve the right to exercise exclusive military control over the concession in case of necessity.

2. The United States Government reserve the right to moor a gunboat or gunboats at the bund of the United States Concession in case of necessity.

3. At least one American citizen to be on the Extra Concession Council. In the event of there being no American citizen on the Extra Concession Council in the ordinary way, the United States Consul should have the right to nominate one by virtue of this arrangement.

4. All transfers of land in the United States Concession to be registered at the United States Consulate.

5. No special regulations which apply to the United States Concession and not to other parts of the British Extra Concession to be made without the approval of the United States Consul.

6. The United States Government to reserve the right to terminate the arrangement with the British Extra Concession on giving one year's notice and assuming any financial liabilities which may have been incurred for the development of the concession with the consent of the United States Consul.

On September 9, 1901, Minister Conger cabled to Mr. Hay asking "if the return of the former United States Concession at Tientsin shall be demanded from the Chinese Government," its only value was in the remote contingency of a point to land troops being required, and that "no Americans are residing or are likely to reside there, and that a general international settlement is impossible." On September 14, Minister Conger made a formal application for the re-cession to the United States of the old United States Concession at Tientsin from the Peking Government. But the reply from the Chinese authorities was unfavorable. Foreign interests, as Li Hung-chang, then Viceroy of Chihli Province, explained, were in possession; but at any rate, it seemed certain that some foreign concerns were decidedly adverse to having the United States resume its former title. As a compromise, the Chinese Government offered the United States a much larger and unoccupied tract a long way

down the river, outside of all the other concessions. But Minister Conger replied that "this would not satisfy us," since the other tract, "even with its present occupants, exactly suited our purpose and was the only tract we desired." On October 11, 1901, Minister Conger wrote to Mr. Hay explaining that the difficulties were caused by the ownership of the China Merchants' Steam Navigation Company and the Chinese Engineering and Mining Company, who were the owners of practically all the land in the tract, and that "these companies represent some of the foremost and wealthiest Chinese in the Empire, and they do not wish to be turned over, together with their property, to foreign jurisdiction, and the Viceroy does not like to brook their opposition."

This matter was finally settled when Mr. Hay wrote to Mr. Conger on November 27 that "in view of the unfitness of the alternatively offered tract for either commercial or military use by the United States, and recognizing the difficulties in the way of the restoration to us of the former concession, by reason of the tenancies which have been established therein since its abandonment by us, it seems undesirable to press the matter further at present. The Government of the United States will, however, expect to have equal favors and facilities with other powers for military purposes at Tientsin, should it at any future time become necessary to carry out the purposes of the protocol with respect to keeping open communication between Pekin and the sea; and if effective assurance in this regard be given we may leave the question of a commercial concession in abeyance until the development of commerce in that quarter shall make it necessary to claim privileges and facilities on the same footing as other powers. We would feel it a duty to reserve our right in such a case." Then Mr. Hay stated:

> It is to be remembered that circumstances have materially changed since the United States relinquished its holding at Tientsin, and that we have entered into conventional arrangements, and engaged in contingent obligations which may make it not only expedient, but necessary to secure a position of equality at Tientsin in matters of commerce and international policy, if our purposes in the direction of enlarged intercourse and the maintenance of close relations of good will with China as well as with the powers are to be effectively carried out, and, consequently, that we cannot neglect any step conducive to those beneficial ends.[22]

[22] *United States Foreign Relations*, 1901, pp. 39–59.

§ 17. *Restoration of Tientsin to Chinese Authorities.*

As early as May 28, 1901, Mr. Rockhill, Special Plenipotentiary of the United States to China, reported to the State Department that the diplomatic corps at Peking believed "that the evacuation of the native city of Tientsin and the transfer by the (International) provisional government to the Chinese authorities of the authority with which it had been intrusted by the commanders of the troops in North China during the period of disorganization resulting from the occupation of Tientsin, should be brought to a close as soon as possible."

On January 20, 1902, Mr. Wu Ting-fang, then Chinese Minister at Washington, wrote to Mr. Hay that in view of the fact that the Imperial Court had returned to Peking, that peace and order had been completely restored, and that as "Tientsin is the port of Peking and the seat of the viceregal Government of Chihli, it should be at once restored to the administration of the Chinese authorities, so that the Viceroy may assume full charge of his office." He also stated that Yuan Shih Kai, the Viceroy of Chihli, informed him that the foreign ministers in Peking had already expressed their consent to the proposition. He then continued: 'I am therefore asked to bring the matter before you, with the request that you will kindly use your friendly offices with the Governments of the other great powers, to the end that a day may be fixed for the immediate restoration of the city of Tientsin and its suburbs to the Chinese authorities." On January 30, Mr. Hay replied Mr. Wu that the Government of the United States favored the early evacuation of Tientsin, and would consult the occupying powers.

On January 29, Mr. Hay instructed the United States ambassadors at London, Paris, Berlin, and Rome, and the minister at Tokyo, to ascertain the views of the respective governments in this matter. In this State Paper, Mr. Hay said:

> It is my understanding that the diplomatic body always adhered to the opinion that this occupation should be promptly terminated . . . This Government inclines to think that the continued existence of the provisional government of the Chinese city and district of Tientsin, which interferes with the general administration of affairs in the province, hampers the efforts of the Chinese Government to control the people and administer the laws, and interferes with the collection of duties pledged to the payment of the indemnities, is not consistent with the terms of the final protocol for the with-

drawal of the powers from Chihli, and that the restoration of the city and district to the Chinese authorities at the earliest day practicable would be conductive to the ends sought in the adjustment of the issues between the powers and China. This would in no wise affect the question of the presence of the detachment of troops of the powers for the maintenance of open communication between the capital and the sea.

On February 17, Mr. Horace Porter, the United States Ambassador at Paris, reported to Mr. Hay that the French Foreign Office shared the views of the United States Government, and that the French Minister of Foreign Affairs also said that the time had come when it was advisable to take such action. The French Minister also stated that he had information that a majority of the governments interested were then of this opinion and that the reports from Tientsin were to the effect that "the representative of but one of the powers has been interposing any active opposition, and that he hopes that all may soon be in accord as to bringing about the desired action." In this report, Mr. Porter said that he had received a note from the French Foreign Minister stating that instructions had been sent to the French representative in China to confer with the other diplomatic representatives of the powers and directing him to give his assent to such a solution of the question "as may receive a general approval and which will comply as soon as possible with the desire expressed by the Chinese authorities and by the United States."

On February 12, Mr. Joseph H. Choate, the United States Ambassador at London, reported that Lord Lansdowne, British Secretary of State for Foreign Affairs, had expressed himself in favor of the speedy withdrawal of the international provisional government. Lord Lansdowne also said that it had always been the intent of his Government, as he believed of all the powers represented in China, to transfer the administration of Tientsin to the Chinese authorities as soon as practicable; that the continued existence of the provisional government was not only unnecessary, but an undesirable interference with the control by the Chinese Government of affairs in that district with the administration of the laws and the collection of duties, and that it would conflict with the last stipulation of the final protocol.

On February 26, Mr. White, the United States Ambassador at Berlin, reported to Mr. Hay that Baron von Richthofen acknowl-

edged the justice of Mr. Hay's view, and that the German government would be glad to see Tientsin relinquished immediately, but for the delay of the Chinese in improving the channel of the Peiho. Mr. White reminded the German Government of the Chinese contention that the presence and authority of the Viceroy was needed in Tientsin for this very purpose. To this Baron von Richthofen answered that no doubt the Viceroy's presence was desirable, and that the German Government was entirely ready to take her full share in the withdrawal of foreign troops just as soon as proper guaranties for the completion of the Peiho improvement should be given. When Mr. White inquired what sort of guaranties were needed to meet the views of the German Government, Baron von Richthofen answered: "Anything that will insure the completion of the work, and probably the only guaranty which will be effective will be a pecuniary one." At this Mr. White inquired whether the Baron had reason to expect that the Chinese Government would be able and willing to give such a guaranty and in such a shape that it would prove effective. To this he answered that he believed it could be arranged speedily, and that he saw no serious difficulty in the matter. On February 25, Baron von Richthofen made a written communication to Mr. White as follows:

The Imperial Government is entirely in accordance with the views of the Government of the United States in looking upon the establishment of the provisional government in Tientsin merely as a necessary expedient which should be done away with as soon as possible. The Imperial Government, however, is in doubt as to whether the provisional government can be done away with at the present moment without making uncertain the early completion of the improvement of the river Peiho, which is indispensable for the safety of the foreign legations in Peking. Besides, the foreigners in Tientsin, as well as the Chinese there, especially the merchants, according to reports which have been received here, are satisfied with the provisional government on account of the advantages offered by an integrant administration. Nevertheless, in consideration of the wishes of the American Government, the Imperial Government is ready to state its willingness to fix a date, say about the middle of the current year, for the abolition of the provisional government. In doing this measures must be taken to insure the immediate carrying out of the regulation of the river bed up to Tientsin, including the removal of the bars before the mouth of the Peiho (for the safety of the foreigners in Peking, a matter of equal interest to all the powers), and to preserve to the foreign military element a certain amount of control over this work.

On February 21, Mr. Prinetti, the Italian Minister of Foreign Affairs, informed Mr. Meyer, the United States Ambassador at Rome, that the Italian Government did not see, "on principle," any objection to comply with the request of Yuan Shih-kai; but that it must withhold its definite answer to the Chinese Minister at Rome, who had also requested the same thing, in order that it might be possible to act jointly with the powers near which China might have taken similar steps.

On March 7, Mr. Buck, the United States Minister at Tokio, reported to Mr. Hay that the Japanese Government shared the views of the United States in regard to the abolition of the provisional government at Tientsin, without affecting in any way the question of the presence of the foreign detachments for the purpose of maintaining free communication between Peking and the sea, provided that all the other powers actually participating in the provisional government agree to the same thing.

On July 15, Mr. Conger reported to Mr. Hay that the five ministers of the powers having representatives on the provisional government of Tientsin, *viz.*, Great Britain, Germany, France, Japan, and Italy, had sent identical notes to the foreign office, stating that they would be willing to turn over the city, provided that the Chinese Government signifies its adherence to the following propositions:

By Article 8 of the final protocol of September 7, 1901, it was declared that the Chinese Government agreed to have the forts at Taku, and others which might interfere with free communication between Peking and the sea, demolished; and it was added that arrangements had been made for this purpose.

The Chinese plenipotentiaries having expressed to the diplomatic body their desire to be relieved of the direct responsibility for carrying out this article, the representatives of the signatory powers intrusted the work to the Tientsin provisional government. It is not yet entirely completed. In order therefore to insure the fulfilment of this article, I have the honor to propose to Your Highness that the work of demolition shall, from the moment of the dissolution of the Tientsin provisional government, be placed in the hands of the G.O.C's. at Tientsin, the necessary funds being provided out of the moneys then remaining in the treasury of the Tientsin provisional government.

By Article 9 of the same protocol it is provided that the powers shall have the right of occupying certain points between Peking and the sea, of which the whole of Tientsin is one. Consequently, after the dissolution of the

Tientsin provisional government, foreign troops will continue as hitherto to be stationed there, in the places actually occupied by them, and their supplies of all sorts continuing, as at present, to be exempt from all taxes or dues whatsoever. They will have the right of carrying on field exercises and rifle practice, etc., without informing the Chinese authorities, except in the case of feux de guerre.

It is desirable, however, to avoid as far as possible occasions of collision between the foreign troops and those of China. I propose, therefore, that with this object the Chinese Government shall undertake not to station or march any troops within 20 Chinese li (6⅔ English miles) of the city or of the troops stationed at Tientsin; further, in correspondence exchanged between the foreign representatives and the Chinese plenipotentiaries, of whom Your Highness was one, previous to the signature of the protocol, it was agreed that the jurisdiction of the commanders of the posts to be established along the line of communications should extend to a distance of two miles on either side of the railway, and this arrangement ought to be maintained as long as the line of posts specified in Article 9 of the protocol continue to be occupied.

I am willing, however, in concert with my colleagues, to consent that the Viceroy should have the right of maintaining a personal body-guard in the city of Tientsin not exceeding in number 300 men; and also that his excellency may maintain an efficient body of river police along the line of the river, even where it runs within the two-mile limit above mentioned.

The demolition of the forts implies an obligation upon China not to reconstruct them, and the same obligation applies to the walls of Tientsin city, which, during the trouble of 1900, were made use of as a fortification directed against the security of the foreign settlements. We cannot, however, consent that the Chinese Government establish maritime defenses at the mouth of the Peiho at Chungwangtao or at Shanhaikuan.

We propose that the accounts of revenue and expenditure of the Tientsin provisional government be audited by two competent persons, one to be chosen by the G.O.C's. at Tientsin, the other by the Viceroy, and the balance after deduction of the sum required to complete the demolition of the forts, be handed over to the provincial treasury.

Your Highness will no doubt think it right to agree that no Chinese subject who has been in the service of the Tientsin provisional government or of the foreign contingent shall be in any way molested on the ground of such service.

Chinese subjects in the employ of the foreign forces on the lines of communication will be provided with certificates of identity. It appears to me necessary that the Chinese Government should admit that in case any such Chinese person commits an offense the commandant in whose service he is should have the right of punishing him or of handing him over to the Chinese

authorities as may, in his opinion, be best calculated to secure the ends of justice.

The right of foreign troops to occupy summer quarters when necessary ought, in my opinion, to be recognized.

A list of unexpired punishments imposed by the Tientsin provisional government will be furnished when that body is dissolved to the provincial government, which ought to undertake to carry them out. No action, either criminal or civil, adjudicated by the provisional government can ever be opened anew.

The archives of the Tientsin provisional government I consider should be intrusted to the senior consul, and application can be made to him by any person entitled to consult them.

As regards taxation, I consider that the inhabitants of the city and district should be regarded as having discharged their duty to the Chinese Government during the period of the continuance of the administration of the Tientsin provisional government and that no arrears ought to be demanded of them under this heading.

Such are the proposals which I consider it my duty to place before Your Highness for the acceptation of the Chinese Government, and I have the honor to declare that I am ready to consent to the dissolution of the Tientsin provisional government four weeks after I receive from Your Highness an intimation that they are accepted. I have only further to request that Your Highness will be so good as to designate the official to whom formal delivery of the city and district can be made by the council of the Tientsin provisional government.

On July 18, Prince Ching informed Mr. Conger that the Chinese Government had accepted the proposal for the restoration of the Tientsin city to the Chinese authorities, and said:

On the 10th of the 6th moon, 28th year of Kuang-hsu (July 14, 1902), I received a dispatch from certain ministers of the treaty powers, stating that in regard to the transfer of the city of Tientsin and the country adjacent to the jurisdiction of the Viceroy of Chihli, these foreign ministers were agreed (of the same opinion). They also had had the honor of receiving the sanction of their respective governments for the abrogation of the provisional government, provided only that the Chinese Government should, first of all, distinctly consent to the conditions proposed, when they, on their part, would promise that in four weeks from the day on which consent was given, the provisional government of Tientsin should be abrogated. They therefore request that it be clearly pointed out to whom, when the time arrives, and into whose hands the provisional government should transfer Tientsin city and the country adjacent.

I have carefully perused the dispatch with regard to the point that military posts should be established along the highway or line of communication from Peking to the sea, with powers to control and punish, the distance to extend as far as two English miles on each side of the railroad.

I would remark that according to the doyen, His Excellency Cologan's dispatch of the 6th moon, 27th year of Kuang-hsu (July, 1901), military control would only refer to offenses against the railroad, the telegraph lines, or against the allies or their property.

As to the remaining articles I have no objection to make.

On the 13th of the current moon (July 17) I memorialized the Throne on the subject and had the honor of receiving the sanction of the Throne by Imperial decree.

Whereupon, I at once sent replies to the ministers of the treaty powers, in order that they might transmit the same to the provisional government of Tientsin, that the provisional government be abolished within four weeks, and the city of Tientsin and its adjacent country be returned to the Chinese administration and handed over to the superintendent of the northern ports, who, at the head of the local officials, civil and military, will be there to receive it.

Hereafter, whenever there is need for consultation, the foreign civil and military authorities can, from time to time, consult with his excellency the superintendent of northern ports, which I hope, will be for the good of the place.

I sincerely appreciate and cannot but express my gratitude to your excellency for the just and friendly way in which you have helped us to obtain the confidence of other nationalities in this matter.[23]

§ *18. Treaty Ports opened by the British Treaty of Shanghai (September 5, 1902) and the American Treaty of October 8, 1903.*

On September 5, 1902, the British Commissioner, Sir James Lyle Mackay, and the Chinese Commissioners, Lu Hai-huan and Sheng Hsuan-huai, signed a treaty at Shanghai respecting the commercial relations of the two countries. By Article 8, Section 12, the Chinese Government agree to open to foreign trade, on the same footing as the places opened to foreign trade by the Treaties of Nanking and Tientsin, the following places, namely, Changsha in Hunan; Wanhsien in Szechuen; Nganking in Anhui; Waichow (Hui-chow) and Kongmoon (Chiangmen) in Kwangtung. By Article 10 it is further agreed that Kongmoon shall be opened as a Treaty Port. But by Article 8, Section 12, it also provides that foreigners residing in

[23] *United States Foreign Relations*, 1901, pp. 184–202.

these open ports are to observe the municipal and police regulations on the same footing as Chinese residents, and they are not to be entitled to establish municipalities and police of their own within the limits of these Treaty Ports except with the consent of the Chinese authorities.

On October 8, 1903, a treaty between China and the United States respecting commercial relations was signed at Shanghai by Edwin H. Conger, John Goodnow, and John Seamen on the part of the United States, and Lu Hai-huan and Sheng Hsuan-huai on the part of China. By Article 12 the Chinese Government agrees that Mukden and Antung, both in the Province of Shengking, shall be opened by China itself as places of international residence and trade, and that the selection of suitable localities to be set apart for international use and occupation, and the regulations for these places set apart for foreign residence and trade, shall be agreed upon by the governments of the United States and China after consultation together.[24]

§ *19. Rights of Foreigners in Peking.*

On October 4, 1901, Prince Ching of the Chinese Board of Foreign Affairs wrote to Minister Conger complaining of the continued residence in Peking of foreign merchants who located there during its occupation by the allied forces. The note stated that "last year after the military disasters it became common for merchants of various foreign nationalities to rent or seize houses in all parts of the city and open shops," but that, as peace and friendly relations had been re-established, seeing that Peking was not in the list of treaty ports, the shops and hongs established by these foreign merchants ought all be removed to the treaty ports in accordance with the treaty stipulations.

Minister Conger replied on October 10, that merchants and other business men of various nationalities had already been given permission to carry on business in Peking, and that, if this was so, then of course citizens of the United States have the same right; but that if all foreign business was to be excluded from the city, the United States merchants, if there were any, would be instructed to go out with the others. He suggested, however, that it was an opportune moment for the Chinese Government voluntarily to

[24] 95 *British and Foreign State Papers* 39 *et seq.*, 97 *ibid.*, 721 *et seq.*; *United States Foreign Relations*, 1903, pp. 91–119.

place the city on the basis of a treaty port, and that "Peking should be the great and convenient entrepot for the vast and populous territory behind it, and if so opened Chinese revenue would be increased thereby, the recently re-established peace and friendly intercourse would be strengthened and mutual benefits result." On November 23, Mr. Hay wrote to Mr. Conger that the State Department approved the latter's reply to the Chinese Foreign Office.

On August 7, 1903, Prince Ching wrote to the Dean of the Diplomatic Corps at Peking on the same subject, saying:

> I have the honor to call Your Excellency's attention to the fact that Peking is not by any means a treaty port. According to the treaties, it was originally agreed that merchants of the various nationalities should not be permitted to purchase houses, reside or establish business houses here.
>
> Since the coming of the allied forces to Peking in 1900, the merchants of their several nationalities have followed them here, have bought houses and opened places of business in great number. Moreover, some have sent the deeds to the places bought, transmitting them through their ministers in Peking to our board to be forwarded to the prefect of Shuntien Fu with fees for his seal, and our board has in each case made an exceptional arrangement and consented, but now, the general aspect of affairs being settled, we ought naturally to return to the old regulation, so as to conform to the requirements of the treaties, and we must therefore clearly state that henceforth merchants of the various powers will not be permitted to buy any more property in Peking for dwellings or to establish places of business, and should there be any additional purchases of property and request be made for official stamping of the deeds our board will not again agree to any exceptional arrangement in the matter.

Mr. Conger, in a despatch to Mr. Hay of August 21, expressed the opinion that it were better not to agree to Prince Ching's request, nor to reject it so flatly as to compel a direct and definite determination, but to leave the matter open for such future discussion as events may require. This suggestion Mr. Hay approved.

The matter was finally settled by the Treaty of Shanghai (October 8, 1903) between China and Japan. By Article 10 "the High Contracting Parties hereto agree that, in case of and after the complete withdrawal of the foreign troops stationed in the Province of Chihli and of the Legation guards, a place of international residence and trade in Peking will be forthwith opened by China itself." By Annexes 6 and 7 of this same agreement, China agrees that a place

in Peking outside the Inner City, convenient to both parties and free from objections, shall be selected and set apart as a place where merchants of all nationalities may reside and carry on trade; that within the limits of this place merchants of all nationalities shall be at liberty to lease land, build houses and warehouses, and establish places of business, but as to the leasing of houses and land belonging to Chinese private individuals, there must be willingness on the part of the owners, and the terms thereof must be equitably arranged without any force or compulsion; that all roads and bridges in this place will be under the jurisdiction and control of China; that foreigners residing in this place are to observe the municipal and police regulations on the same footing as Chinese residents, and they are not to be entitled to establish a municipality and police of their own within its limits except with the consent of the Chinese authorities; that when such place of international residence and trade shall have been opened and its limits properly defined, the foreigners who have been residing scattered both within and without the city walls, shall all be required to remove their residence thereto, and they shall not be allowed to remain in separate places and thereby cause inconvenience in the necessary supervision by the Chinese authorities; that the value of the land and buildings held by such foreigners shall be agreed upon equitably, and due compensation therefor shall be paid; and that the period for such removal shall be determined in due time, and those who do not remove before the expiry of this period shall not be entitled to compensation.[25]

§ 20. *The Whampoo River Conservancy.*

On September 27, 1905, an Agreement for the Whampoo Conservancy was signed at Peking by the powers signatories of the final protocol of September 7, 1901, and China. The preamble, stated:

With reference to the provisions of the final protocol of 1901 relating to the establishment of a Whangpu (Whampoo) conservancy board, its functions and revenues, China being now desirous of substituting a different arrangement, assuming charge herself of the work and making herself responsible for the whole costs, and the powers who were parties to the protocol

[25] *United States Foreign Relations*, 1903, pp. 119–123; 96 *British and Foreign State Papers*, 578, *et seq.*

having given their consent thereto, the following arrangement has been agreed to:

The agreement (Article 1) provides that the works in connection with the straightening of the channel of the Whampoo River and of the improvement of the bars above and below Wusung, together with the maintenance of such improvements, shall all be placed under the management of the Shanghai Customs Taotai and the commissioner of customs, and that the control of the Whampoo River police, lights, beacons, sanitary matters, and pilot service, shall be under the same control as formerly; that (Article 2) within three months from the date of signing the agreement China will herself select an engineer well versed in river conservancy work, and if a majority of the representatives of the powers parties to the final protocol consider him well qualified, China will at once appoint him to undertake the work, and that if after the commencement of the work a new appointment for reasons deemed valid by a majority of representatives becomes necessary, the selection and appointment shall be made in the manner above mentioned; that (Article 3) for all contracts for undertaking the river works in whole or in part and for purchasing materials and machinery and the like, public tenders shall be invited and the most advantageous shall be accepted; that (Article 4) a detailed quarterly report of the work done and an account of moneys expended on the river works shall be made and forwarded for the inspection of the consular body at Shanghai; that (Article 5) the authorization of the Shanghai Customs Taotai and of the commissioner of customs shall be necessary before new bunds or jetties can be constructed, pontoons placed in position, or hulks stationed in the river; that (Article 6) the Shanghai Customs Taotai and the commissioner of customs shall have authority to expropriate existing moorings and to establish a system of public moorings in the river; and that (Article 7) no dredging or other operations shall be carried out without the authorization of the Shanghai Customs Taotai and the commissioner of customs. Article 8 provides:

The Shanghai Customs Taotai and the commissioner of customs shall have power to acquire any land outside the foreign settlements necessary for the work of improvement and maintenance of the Whangpu (Whampoo) River and to dispose of such land. If for this purpose it is considered necessary to proceed by way of expropriation, the price in the case of a foreigner's prop-

erty shall be fixed by a commission composed of (1) a person selected by the consular authority of the owner, (2) another chosen by the Shanghai customs taotai and the commissioner of customs, and (3) of another chosen by the senior consul. In case the senior consul is also the consular authority of the owner, the consul next in seniority shall choose the third member of the commission. The consular authority of the owner shall provide for the execution of the arbitrator's decision. When the land is the property of a Chinese the customs shall fix the price and enforce the decision in an analogous manner.

Then it provides:

Foreign and Chinese riparian owners shall have the right of preemption over all land formed in front of their property by reclamation from the river in the course of the execution of the works of the improvement of the channel at a price to be fixed by a commission formed in the same manner as prescribed in the preceding paragraph, or, as the case may be, by the customs authorities.

It also provides (Article 9) that the Chinese Government bears the whole costs of the river works and without levying for this purpose dues on riparian property, shipping, or goods; and in providing for the funds for the cost of the river works it (Article 10) states:

China now sets aside and assigns the entire opium duty of Szechuen and Hsu-chou Fu in Kiang-su as security for the whole cost of the river works; and in accordance with the estimated cost, as stated in the protocol of 1901, will annually supply 460,000 haikwan taels for this purpose for a term of twenty years. If during any given year after the commencement of the work it is necessary to incur an extraordinary expenditure for the purchase of materials, machinery, etc., China may raise, to meet it, a loan for the required amount and issue bonds on the security of the above-mentioned opium revenues. The total sum annually provided for sinking fund and for interest on such loan, as well as for expenses of all kinds on account of works and maintaining works already completed, shall not be less than 460,000 haikwan taels to be paid, to be paid in equal monthly instalments by the provincial authorities concerned to the Shanghai Customs Taotai and the Commissioner of Customs. Should the revenues assigned fall short, the Chinese Government will provide the amount specified from other sources.

Further it provides (Article 11) that if the works are not carried out with diligency, care, and economy, by a majority vote, the consular body may unite to point out the fact to the Shanghai Customs Taotai and the commissioner of customs, and call upon them

to direct the engineer to take steps to remedy the matters complained of, and if the work is still not properly done, they may recommend the engineer's dismissal and the selection and appointment of another engineer, in the manner described in Article 2; and that in case no notice is taken by the Shanghai Customs Taotai and the Commissioner of Customs of their representatives, the consular body may report to the representatives of the powers interested.[26]

§ *21. Reservation of American Rights in the Extension of the Japanese Concession at Hankow.*

On June 17, 1907, Mr. K. Midzuno, the Japanese Consul at Hankow, informed Mr. Martin, the United States Consul, that he had secured from the Chinese authorities an extension of the Japanese Concession at Hankow, and that the area which extended from the end of the original Japanese Concession 150 chang northward along the river and 120 chang to the west from the bank of the river, having been leased "in perpetuity" to the Japanese Government in virture of an agreement signed on the 9th of the preceding February last by the Taotai and himself, and subsequently sanctioned by the respective superiors, the consulate was under instructions to start registry of ownership of the land situated within the foregoing limits. The Consul, therefore, requested Mr. Martin to notify Americans, who might possess land on the concession extension, to produce their title deeds at the Japanese consulate for examination and registration before or on the 16th of August, 1907.

On June 19, Mr. Martin reported the matter to Mr. Rockhill, the United States Minister at Peking, and stated that the property of the Standard Oil Company, both tanks and godowns, was in the area which the Japanese Consul announced to his colleagues as the Japanese Concession extension.

On July 8, Mr. Rockhill replied that he could not see any objection on the part of the Americans to complying with the request for producing their title deeds at the Japanese consulate for registration; but that, in informing the Japanese Consul that notice to that effect had been given, he should be told that the United States reserved full extraterritorial rights over American-owned property situated in the concession extension, as well as over American owners of such property.

[26] *United States Foreign Relations*, 1904, pp. 186–200; *ibid.*, 1905, pp. 117–124; *ibid.*, 1910, pp. 353–361.

On July 9, Mr. Rockhill, in a report to his Government, clearly pointed out that Article 8 of the Agreement for the extension of the Japanese Concession was the only stipulation affecting American interests. This Article provides that property in the concession extension purchased by foreigners from Chinese subjects before the opening of the Japanese Concession will, unless there is some reason existing to prevent it, be dealt with according to the rules in force in other foreign concessions, but that as the 'concession' is of very small area, none but Japanese subjects will be permitted to buy land therein after the signing of the agreement. It further declares that Chinese subjects will not be permitted to mortgage their property in the concession to foreigners (other than Japanese) or to rent or sell to them, and that transgressors of this rule "will be severely punished by the local Chinese authorities." Reputable and well-to-do foreigners desiring to live within the limits of the Japanese Concession are permitted to do so, but they may not buy land therein. In closing his note, Mr. Rockhill said:

> In giving the Consul-general instructions to inform the Japanese Consul "that the United States reserves full extraterritorial rights over American-owned property situated in the concession extension, etc.," I was guided by the note addressed by Mr. Hay to Mr. Cambon, on June 12, 1899 (*Foreign Relations* 1899, p. 283), in reference to the extension of the French Concession at Shanghai.

On August 28, Mr. Rockhill was informed that his action was approved by the Department.[27]

§ *22. The Right of Aliens within the City Walls of a Treaty Port.* In 1905 the Chinese authorities at Changsha, the Capital of Hunan Province, denied that the native city of Changsha was a part of the treaty port. This denial was strenuously resisted by the British Consul-general at Hankow, who, acting under advices from the legation wrote to Messrs. H. Bennertz & Company of Changsha that Sir Ernest Satow, the British Minister, had warned the Bureau of Foreign Affairs at Pekin that the recent regulations restrictive of trade at Changsha were not, in the absence of the assent of the Powers, binding on British merchants, and had required the Bureau to instruct the Changsha Taotai that British subjects at Changsha are not obliged to conform to regulations

[27] *United States Foreign Relations*, 1907, Part I, pp. 224–226.

other than those usual at the ordinary treaty ports. The Consul-general, therefore, told his correspondents that they were at liberty to open business houses and to display their hong's sign-boards in the city of Changsha; and on February 27, 1907, he further wrote to them that, as the British Minister considered the city of Changsha to be a part of that open port, they were entitled to take goods which had passed the Imperial Maritime Customs at Changsha into any premises of which they were lawful tenants, within the native city, and to dispose of them there.

This question was finally settled, when the British Consul-general succeeded in persuading the Changsha authorities to issue a joint proclamation, acknowleding the status of the city as a treaty port. This proclamation, after recapitulating portions of treaties made between China and Great Britain for the opening of ports for international trade, and quoting the latest commercial treaty (1903) between China and Japan, which permitted Chinese and Japanese to establish joint companies for business, and laid down the rules governing such bodies, declared that, as the city of Changsha, in Hunan, has been opened to trade its status must be similar to the treaty ports previously opened. This proclamation further stated that the officials, in arriving at this decision, had consulted harmoniously with the British Consul-general, and called upon all concerned to act with perfect sincerity in their dealings with the foreign merchants, and in order that "all may live together in peace and friendship." [28]

In 1908, the Rev. D. W. Nichols, previously connected with the Methodist Mission at Nanking, but was then residing in the United States, sold to Mr. J. F. Newman, an American citizen, a plot of land located within the city walls of Nanking and fronting on the main maloo, on which Mr. Newman was then erecting a dwelling house. The original deed of purchase was registered in the land record book of the American consulate on May 30, 1903. On November 30, the director of the foreign office at Nanking lodged a vigorous protest against the purchase and improvement of the land by Mr. Newman, declaring, in support of his protest, that, as Mr. D. W. Nichols, when he bought the land was a missionary and had bought it for missionary purposes, it could not be diverted, through purchase, to other purposes. He further declared that when the

[28] *North-China Herald*, September 8, 1905.

original deed was registered, the letter of the American Consul with which it was sent to the foreign office for stamping stated that the property was to be used for missionary purposes. On December 5, Mr. McNally, the United States Consul at Nanking, reported the matter to Mr. Rockhill, Minister at Peking, who on the 16th of December, replied that the American Government considered that all the treaty ports in China were open in their entirety for purposes of trade and of residence, unless it was otherwise agreed, and that at Nanking, no concession or settlement having been agreed upon, foreign residents had the right to lease, purchase, transfer, or sell real estate within the whole area of the city, whether they were missionaries or merchants. He, therefore, instructed Mr. McNally not to recognize the limitations which the Chinese authorities at Nanking were attempting to impose. Mr. Rockhill's instruction was approved by Mr. Robert Bacon, Secretary of State, in a letter addressed to Mr. Rockhill dated February 23, 1909.[29]

§ 23. *The Neutrality of the Foreign Settlements in the Treaty Ports during the Revolution of 1911.*

During the Revolution of 1911, the Foreign Settlements in the Treaty Ports maintained impartial neutrality, the foreign consuls issuing proclamations to that effect. At Hankow the British, German, French, Russian, and Japanese Consuls issued the following proclamation[30] in Chinese:

A Proclamation with Respect to the Observance of Neutrality.

Whereas at present the Chinese Government is in conflict with the Ming Kwoh Chuin (Republican Army), and they have mutually joined in battle, in such a juncture, it is provided by international law that, when the government of any country is at war with its people, the nationals of other countries resident there have nothing to do with the control of its internal affairs, but must observe a strict neutrality. They must not harbor or conceal important parties on either side or give the slightest assistance to either. In accordance with the above, the various consuls notify that a strict neutrality is to be observed, and that, as the regulations of the concessions require, armed soldiers of either party are not permitted to appear within the concession limits, nor are arms of any sort or munitions of war allowed to be stowed there. The consuls, in order that they may observe the requirements of international law, and maintain the friendly relations which it is their duty

[29] *United States Foreign Relations*, 1909, pp. 51–55.

[30] *North-China Herald*, November 4, 1911, November 18, 1911.

to do to the fullest extent, issue this special proclamation and expect the assistance of all Chinese officials and people of every rank to lend them aid that by the observance of neutrality the end may be accomplished. The consuls will be happy to have it so, and the Chinese will be happy to have it so.

§ *24. The Shanghai French Concession Extension.*

In 1912 the French at Shanghai sought to extend the boundary of their concession near Sicawei, a residential district, where there was a small creek, 1,350 feet in length, named Mayipang. On the allegation that condition of the creek was unsanitary, the French Municipal Council employed workmen to fill it up, and to construct on its course a maloo. The Chinese authorities lodged a strenuous protest before the French Consul-general, asserting that the creek was outside the French boundary. A joint inspection of the locality was then held, the French Consul-general having agreed meanwhile to suspend the work. The matter remained unsettled until July, 1914, when an agreement was concluded between China and France at Peking for the inclusion of the outlying portions of the territory within the French Concession. The practical effect of the agreement was to give a legal sanction to the de facto status of the region called "Région des routes extérieures de la Concession francaise," which was gradually coming under the administration and the police of the French Concession, and to define the limits of the said region, in order to prevent misunderstandings and abnormal interferences from either side.

After describing the de facto situation and defining the limits of the extension, *i. e.*, Great Western Road on the north, Sicawei Road on the west, Sicawei Creek from the Sicawei Bridge to the St. Catherine Bridge on the south, the center of the Chaochuloo (new boundary) from the St. Catherine Bridge to the rue Millot, on the east, the agreement provides that this region shall in future be under the administration and police of the French Concession. The eastern boundary is, however, to be policed by French and Chinese constables. Chinese troops, funerals, and wedding processions are allowed to cross the concession after an understanding with the police. The provision of the regulations of 1868 for the appointment of two members of the Chinese gentry to look after the municipal interests of the Chinese is renewed, and the French municipality is required to collect the land tax due to the Chinese Government from foreigners and Chinese alike. Other provisions, already in-

cluded in the Land Regulations, relating to exemption from taxes on cultivated fields, the non-removal of family graves, and the competence of the magistrate of the French Mixed Court to deal with cases affecting Chinese, are reaffirmed. The settlement of any questions arising as to the new limits is left to the French municipal council and the municipal council of the International Settlement.[31]

§ 25. *The Question of Extending the International Settlement at Shanghai.*

Early in 1912, the municipal council of the International Settlement at Shanghai established a police sub-station on North Szechuen Road Extension, and began to police the Haskell Road. The Chinese residents of the Chapei District therefore held public meetings, and strongly protested against this encroachment on their territorial jurisdiction.

On April 17 a Sikh policeman, on patrol duty on North Szechuen Road Extension, had reached a point two or three hundred yards to the north of Range Road, where he was seized by three Chapei police, who after taking away his carbine, set him free. Later in the month another Sikh policeman, who, whilst off duty, happened to set foot within the Chapei territory, was arrested and hurried to a police station, where he was held in custody for several hours.

On April 29, an officer of the Chapei police was arrested by the municipal authorities of the International Settlement for attacking on Alabaster Road a ricksha coolie, who was attempting to cut off a man's queue. Later, by way of reprisal the Chapei police arrested two Chinese policemen attached to the West Hongkew station of the International Settlement, apparently for the reason that they were believed to have been instrumental in effecting the arrest of the Chapei policeman. On May 9, while these cases were still unsettled, a Chinese constable, attached to the municipal force, was patrolling the Szechuen Road Extension in plain clothes, where, at practically the same point where the Sikh policeman was deprived of his carbine, he encountered a Chapei policeman, who was armed with a sword. Accounts differ as to what then happened, but it seems that the municipal policeman tried to arrest the Chapei policeman for patrolling a settlement road. The Chapei policeman, however, proved to be the stronger, and was gradually dragging the

[31] *North-China Herald*, June 1, 1912; *ibid.*, July 18, 1914.

municipal policeman over the boundary, when the latter got at his whistle and blew it for help. The violence of the altercation brought aid to both sides, and a serious struggle between the Chapei and the municipal police seemed imminent, when the attempt to arrest the Chapei policeman was abandoned and both sides withdrew.

When the queue-cutting case soon afterwards came up for trial before the Mixed Court, it was dismissed on the ground of a defect in the evidence for the prosecution. A few hours later the two municipal policemen, who were held by the Chapei police, were released from custody.

The controversy as to the boundary question continued in various forms. The Chapei authorities issued a proclamation instructing the Chinese residents on the North Szechuan Road to withhold the payment of taxes to the Municipal Council of the International Settlement. In consequence, when an attempt was made to prosecute various Chinese shopkeepers for a breach of municipal regulations in refusing to pay the taxes levied upon them, they declined to respond to the summonses issued by the Mixed Court. Warrants were then issued for their arrest; but this step only led to further discussions, while each side continued to contest the attempts of the other to exercise jurisdiction.

On June 14, 1912, an interesting case came up in the Mixed Court, involving a charge against a Chapei tax official, a Chapei police inspector, and a carpenter, for exercising authority on the Municipal Road Extension, and particularly for affixing plates to a number of houses "without having obtained the necessary permit." The case was tried by Mr. Kuan, the magistrate, and Mr. Schirmer, the German assessor. The police of the International Settlement, by whom the defendants were arrested, were represented by Mr. R. M. J. Martin, while Mr. Engel, secretary of the Chapei Board of Control, represented the Chapei municipality. It appeared that the plates, which bore Chinese characters, were not only affixed to private houses, but that one was placed on the police sub-station. Mr. Engel, in reply to a question of the assessor, stated that the accused were acting under the orders of the Chapei Board of Control, who had been instructed by the Soochow authorities to make a survey of the district; and he expressed the opinion that no opposition would have been raised if a plate had not been placed on the so-called "police sub-station," which, he contended, was not

in a proper sense a police station but only quarters for the police. He maintained that the road was not subject to the International Council, and that the Chapei administration had the right to number the houses there. The court took the opposite view, and sentenced each defendant to one day's imprisonment from the day of arrest, Mr. Engel agreeing, on behalf of the Chapei administration, to stop the numbering of the houses.

A controversy also arose as to the Haskell Road, the Mayor of Chapei addressing to the Shanghai Tutuh (governor-general) a despatch in which he complained that the Municipal Council had secretly sent a force and driven out the Chapei police, some of whom had even been arrested and detained at the municipal police station. These things the despatch denounced as "a slur upon our Republic" and as "truly humiliating to the nation." It further stated that Indian constables had been sent to the scene, armed with rifles, and that they were using force without regard to the boundary line; and that, if this was not prevented, they would soon enter the Shanghai-Nanking Railway station, and thus be in a position to interfere with the transportation by the Chinese Government of troops and arms. The Commissioner of Foreign Intercourse was therefore requested to appeal to the Doyen of the Consular body, and a telegram was sent to President Yuan Shih-kai petitioning him to ask the British and American Ministers at Peking to order the Shanghai municipality to give way. The discussions have continued; and several Chinese officials of high rank have from time to time been deputed to report to Peking. Early in 1914 Admiral Tsao spent a fortnight at Shanghai for the purpose of ascertaining the opinions of the residents of Chapei and others. The inquiry, however, was of a private nature, and the report submitted to the Waichiaopu (Ministry of Foreign Affairs) was not made known. Later in the year, Mr. Yang Tcheng, the Commissioner for Foreign Affairs at Shanghai, was summoned to Peking. But the European War soon broke out, and as other problems, both domestic and foreign, required immediate consideration, and as Great Britain's attention was concentrated on the European war, the matter remained unsettled.[32]

[32] *North-China Herald*, April 6, 1912; *ibid.*, April 27, 1912; *ibid.*, May 4, 1912; *ibid.*, May 11, 1912; *ibid.*, May 25, 1912; *ibid.*, June 29, 1912; *ibid.*, July 20, 1912; *ibid.*, October 31, 1914; *ibid.*, November 14, 1914.

§ *26. The Question of Extending the French Settlement at Tientsin.* In 1902 the French Consul at Tientsin sent a communication to Tang Shao-yi, then Taotai of Tientsin, applying for an extension of the French Concession so as to include the district known as Lao Hsi Kai. To this communication the Taotai did not even respond. However, the French had policed the area for many years, and Chinese legal documents served on Chinese subjects there were then compelled to be first submitted to the French police. In July, 1914, the appearance of Chinese police on the scene called forth a vigorous protest from the French authorities; after which it was agreed that, pending the settlement of the French claim, the Chinese and French police should act in the area conjointly, neither side increasing the number of its force.

There the matter rested until the spring of 1915, when the French Consul, M. Bourgeois, made the fantastic claim that the failure of the Taotai to respond to the demand of 1902 was equivalent to acquiescence. This time, however, he demanded only half the district—350 acres. This demand the Chinese Foreign Office at first refused to consider, but it subsequently offered to concede it, provided the local opposition in Tientsin, which was great, could be overcome. Negotiations continued, but, owing to the temporizing policy of the Chinese, and the unsettled condition of the Government, they made little progress; and when at length the Waichiaopu (Foreign Office) on October 18, 1915, asked for further delay, the French Chargé d'Affaires refused to allow more than forty-eight hours. Accordingly, on October 20, the Chinese Government, having still failed to yield, some thirty French-Annam 'peelers', acting under the personal supervision of the French Consul-general, seized the territory, and arrested nine Chinese Constables who were on duty there.

When news of this transaction reached the people, indignation spread very rapidly. Meetings were held and many impassioned speeches were made in the public squares. On October 21, the day after 'the land-grab', a gathering of 4,000 persons took place at the Chamber of Commerce Building, demanding that immediate steps be taken for the recovery of the territory. According to one report, the crowd would have immediately proceeded to end the French occupation but for the arrival of the Chairman and Committee of the National Territory Protection Society, organized some time

before, who succeeded in calming the people by promising to take them to the Governor's Yamen.

At the Yamen, the Governor, Chu Chia-pao, denounced the French action as aggressive and unreasonable; declared himself ready to sacrifice his position and rank, even his life, to the preservation of the territory of the nation, and promised not to yield the land to the French. He added that a detailed report of the affair had already been telegraphed to the Central Government, and counselled the people meanwhile to remain calm and refrain from acting unwisely.

When matters reached this point, the Chinese constables, who had been illegally arrested by order of the French Consul-general at Tientsin, were released, partly because of the disturbances and partly because of the intervention of the Special Envoy of the Ministry of Foreign Affairs.

On October 28, a mass meeting took place at Tientsin, and resolutions were passed demanding that the whole nation boycott French trade and goods; that the circulation of French bank-notes should cease; that the French employment of Chinese laborers should stop; that nothing should be sold to the French; that a cable be despatched to the Chinese Minister at Paris to demand the recall of the French Chargé d'Affaires and of the Consul-general at Tientsin; and that representatives should be appointed to see the President and urge him to demand an apology from the French Government for the unfriendly act.

The Ministry of Foreign Affairs, in a report to the President, took the position that the dispute should be settled by diplomacy, but without impairing Chinese sovereignty, or increasing international friction, or intensifying popular indignation. Two agreements were drawn up, but the French Chargé d'Affaires declined to accept either of them. At this point the British Minister, Sir John Jordan, acting upon the request of his colleagues, tendered his services as mediator, and a draft of an agreement was speedily arranged. Roughly, it provided that the disputed area should be under the joint administration of a commission of three, consisting of the Governor of Chihli, one other Chinese, and one Frenchman; but police, sanitation, and construction were to be under the control of the French. As an *amende honorable*, the French agreed to permit the Chinese police to exercise authority in the area for an-

other fifteen days, after which the new arrangement was to come into force.

When, however, the Ministry of Foreign Affairs asked for time to submit the agreement to the Parliament for ratification, the British Minister presented a virtual ultimatum, insisting on the signature of the document within a few hours on pain of a rupture of negotiations. Thus the negotiations were broken off, and the matters rests in a deadlock, with the French in possession of the territory. It was a peculiar action for a mediator, and it became evident to the Chinese officials that Sir John Jordan was acting, not as a mediator, but as the representative of the Entente Allied Powers.

On December 23, Mr. Hu Wei-teh, Chinese Minister at Paris, telegraphed to the Peking Government that the French Chamber of Deputies had requested the French Government to issue instructions to the French Chargé d'Affaires at Peking to settle the Lao Hsi Kai dispute with China as soon as possible in order to avoid impairing the friendship of the two countries and adding to the loss and damage suffered by French merchants in China.

Later the French Chargé d'Affaires submitted the following terms as a basis of settlement: (1) To punish those who had been on strike; (2) To indemnify the losses of French merchants resulting from the strike; (3) To dissolve the body of agitators at once; (4) To punish as severely as possible the officials who had been negligent in the performance of duties of an international character; (5) To suspend the publication of all anti-French newspapers; (6) To lease Lao Hsi Kai to France for a term of years, at the end of which it was to be returned to China.

This incident has aroused a vast amount of bitterness among the Chinese. The press has pointed out, with biting irony, that the principles at stake are exactly those principles for which France says she is fighting in Europe—the protection of weak nations. The people have held heated mass meetings, and much more important, there has been brought forth China's most potent weapon—the trade boycott. A committee of leading Tientsin citizens telegraphed throughout the country urging the people to suspend all trade with French citizens, to accept no notes of the French bank in China and to stop the exportation of Chinese labor for munition works in France. As a result there has been a serious run on the

French bank, and all the workers in the employ of the French have left their posts. This kind of 'strike' has extended even to the street cleaners and the 'amahs'. The enthusiasm was very great among the laboring class, who declared: "Our service is not for money, but for the friendship that exists between France and China. Since France has extorted Chinese territory and arrested Chinese police by force, that friendship is cut short, and so we stop dealing with you any more." This proves that national patriotism is growing among the masses of the people, who are willing to sacrifice their own enjoyments, comforts, even themselves, for their country, and who realize that the cause of the country is really theirs.

As the strike went on the situation became even more serious, and the French Concession was reduced to a 'black region' for some time, as it was forced to go without electric light for a long period when the workers in the power plant struck as a protest. Furthermore, the wave of resistance has spread to the other ports from which have come urgent telegrams requesting the Government to preserve the sovereignty of China over the seized territory. This deadly weapon, the trade boycott, has been China's most potent means of reprisal. Its effectiveness has been noticeable in the history of international trade, and France has already paid more than a 'boom' price for her real estate.

All this bitterness has been caused by something more important than the value of the land lost and the humiliation in losing it. There is involved a vital principle, and an ugly precedent. China finds it impossible to escape the conclusion that she has as much to fear from Europe as from Japan, and that the hope that to the western world at least she had established her right to existence as a nation is but an illusion. Confronted with such a sinister example, one can hardly be surprised if China, though accustomed for a decade to look upon Japanese aggression as her greatest menace, should be forced to conclude that the professions made by the Western Powers of a desire to preserve her territorial integrity can be trusted only so long and so far as advantage may not be found in the violation of her sovereign rights.[33]

[33] *North-China Herald*, October 28, 1916; *ibid.*, November 18, 1916; *ibid.*, November 25, 1916; *ibid.*, December 30, 1916; *Peking Gazette*, October, 1916–February, 1917; *Shanghai Eastern Times*, October, 1916–March, 1917.

Chapter VI

Municipal Administration of the Treaty Ports

In the settlement or concession, the function of the municipal administration is defined by the Land Regulation of each settlement or concession. This municipal administration is to be exercised by the Municipal Council. In the Land Regulation of each settlement or concession, the qualifications of the candidates for the election as members of the Municipal Council are defined; the method for the election of these members is provided; the tenure of office is regulated. Besides these the Municipal Council are authorized at their discretion to appoint out of their own body any number of committees for any purpose wherein they are empowered to act.[1]

The Municipal Council are also authorized to execute the decisions, by-laws, and regulations of the settlement; and they may appoint such "officers and servants" to carry out the municipal regulations and ordinances. The Council are given the power to administer the municipal funds for the public use and benefit, at their discretion, with due regard to the Budget passed, provided they do not exceed the sum voted at the public meeting of the land renters. The power to use public land, to construct and repair public works, and to purchase and rent land, houses, and buildings for municipal purposes, is to be exercised by the Council. Further, the Council are authorized to sue all defaulters in the payment of all assessments, rates, taxes, and dues whatsoever, levied under the municipal by-laws and regulations, in the Consular or the Courts under whose jurisdiction such defaulters may be, and to obtain payment of the same by such means as shall be authorized by the Courts in which such defaulters are sued. The Land Regulation also provides that the Municipal Council may sue or be sued in the name of their Secretary or in their corporate capacity, and that

[1] *Tientsin French Concession Land Regulation*, Articles 6–17; *Tientsin Russian Concession Land Regulation*, Chapters 4, 5 and 6; *Tientsin German Concession Land Regulation*, Chapter 3; *Tientsin Austro-Hungarian Concession Land Regulation*, Chapter 2; *Tientsin British Concession Land Regulation of 1866*, Articles 8, 11, 12 and 23; *Shanghai International Settlement Land Regulation of 1869*, Articles 18–23.

such Council or Secretary shall have all the rights and privileges which private complainants have to recover and enforce judgments obtained by them, and shall also incur the obligations which private defendants have in proceedings at law or suits in equity commenced against them, provided that the individual members of the Council or their Secretary shall not be personally responsible, but only the property of the Council.[2]

In suing the Municipal Council or their Secretary, the plaintiff must follow the defendant to the Consular Court to which nationality the latter belongs. But in the Shanghai International Settlement, the Municipal Council or their Secretary shall be prosecuted before a 'Court of Foreign Consuls', which shall be established at the beginning of each year by the whole body of 'Treaty Consuls'.[3]

In all these settlements or concessions, the police force is organized either under the supervision of the Council or of the Consul. The police are required to enforce the municipal regulations, by-laws, and health ordinances of the settlements or concessions. Further, they must secure protection for life and property, and the preservation of public peace and order. In the Tientsin German Land Regulation of 1906,[4] the following duties are assigned to the police force:

1. The protection of life and property.
2. The enforcement of preventive measures against contagious diseases and epidemics.
3. The enforcement of protective measures against the danger of incendiary and inundation; and, in general, against all dangerous acts and enterprises which are detrimental to the public welfare.
4. The maintenance of security and facility for the transportation system.
5. The authority to grant license for the establishment of industrial enterprises.
6. The supervision of the construction and exploitation of industries.
7. The supervision of the hotels, taverns and cabarets.

[2] *Tientsin French Concession Land Regulation*, Articles 18–23; *Tientsin Russian Concession Land Regulation*, Chapters 8–9; *Tientsin German Concession Land Regulation*, Chapter 3; *Tientsin Austro-Hungarian Concession Land Regulation*, Chapter 2; *Tientsin British Concession Land Regulation of 1866*, Articles 8, 11, 12 and 23; *Shanghai International Settlement Land Regulation of 1869*, Articles 6, 9, 13, 14, 25–27.

[3] *Shanghai International Settlement Land Regulation*, 1869, Article 27; *Tientsin British Concession Land Regulation of 1866*, Article 12; *Tientsin French Concession Land Regulation*, Article 23; *Tientsin Russian Land Regulation*, Chapter 9; and *Tientsin German Land Regulation*, Chapter 6.

[4] *Tientsin German Concession Land Regulation of 1906*, Chapter 5.

The municipal administration of the various settlements and concessions of the treaty ports may be divided into two separate classes. In the first class, we have the centralized form of municipal administration, *e. g.*, the French, Russian, German, Austro-Hungarian, Italian, and Japanese concessions, where the Consuls of these powers respectively are given more powers in regulating and supervising over the Municipal Council. On the other hand, in the Shanghai International Settlement, the Kulangsu Foreign Settlement, and the British Concessions, we have the decentralized form of municipal administration.

The regulation of 1866 for the municipal organization of the French Concession at Shanghai is a typical example of the centralized form of municipal administration. This characteristic feature of French rule, great centralization, is apparent in every article. The French Consul is in fact everything, and he possesses the power to convoke, suspend, or dissolve the Council whenever he likes.[5] Further, he is given the authority to nominate a provisional council for three or six months, which is seldom exercised, as he is also possessed of the power to veto or suspend every act it passes until he reports to the French Minister at Peking.[6] Then it is provided that the French Consul shall be one of the nine Municipal Counsellors;[7] and that he has the right to preside over the Council.[8] Then the Consul is charged with the maintenance of peace and order; and it also provides that he has charge of the police force, the expenses of which are paid by the municipality, and that he appoints their agents, suspends or revokes their commissions.[9]

On the other hand, the International Settlement at Shanghai, the Kulangsu Foreign Settlement, and the British Concessions have a decentralized form of municipal administration. The Municipal Council of these settlements and concessions are elected by the land renters, and no consul has the power to convoke, suspend or dissolve them.[10] However, the Council at Kulangsu have a Chinese member,

[5] Article 3.
[6] Articles 8 and 10.
[7] Article 2.
[8] Article 7.
[9] Article 13.
[10] *Shanghai International Settlement Land Regulation of 1869*, Article 15; *Kulangsu Foreign Settlement Land Regulation of 1902*, Article 4; *Tientsin British Concession Land Regulation*, Article 9; *Hankow British Concession Land Regulation*, Articles 12–14.

who must be appointed by the Taotai of Amoy.[11] As the consuls cannot be members of the Council of these settlements and concessions, and as the chairman of the Council must be elected by the members among themselves, consequently no consul can ever be president of the municipal organization.[12] Further, the supervision of the police force in these settlements and concessions is confided to the Municipal Council, while in the centralized system it is under the charge of the consul. Finally, in the decentralized form of municipal administration, the consul does not have the power to nominate a provisional Council, as he has no right to convoke, suspend or dissolve the Council;[13] but there is a judicial control to be exercised over them by the 'Courts of Foreign Consuls' of the Shanghai International Settlement and Kulangsu Foreign Settlement, or by the British Consular Courts in the British Concessions, as they may be prosecuted before these courts respectively.[14]

[11] *Kulangsu Foreign Settlement Land Regulation of 1902*, Article 4.

[12] *Kulangsu Foreign Settlement Land Regulation*, Article 4; *Shanghai International Settlement Land Regulation of 1869*, Article 21; *Tientsin British Concession Land Regulation*, Article 9; *Hankow British Concession Land Regulation*, Article 13.

[13] *Hankow British Concession Land Regulation of 1902*, Articles 12–14; *Tientsin British Concession Land Regulation*, Article 13; *Shanghai International Settlement Land Regulation*, Articles 18–19; *Kulangsu Foreign Settlement Land Regulation*, Articles 3–4.

[14] *Shanghai International Settlement Land Regulation*, Article 27; *Kulangsu Foreign Settlement Land Regulation*, Article 8; *Tientsin British Concession Land Regulation*, Article 12; *Hankow British Concession Land Regulation*, Article 20.

Chapter VII

Foreign Jurisdiction in the Treaty Ports

§ 1. *Criminal and Civil Jurisdiction in Cases Between Chinese and Aliens.*

Among the several earlier and later Acts of the English Parliament relating to foreign jurisdiction, that of 1843 is notable as being the first in which fundamental propositions of law were set forth looking to the control of such jurisdiction in its entirety. The thirteenth of the general regulations of trade, of July 22, 1843, which were subsequently incorporated in the Supplementary Treaty with Great Britain of October 8, 1843, provided that the punishment of English criminals should be left to the English Government, which would enact the laws necessary to attain that end, and would empower its Consuls to put them in force. This statement is far less explicit than that which was incorporated in the American Treaty of July 3, 1844. The latter treaty, setting forth with lucidity and precision of the principle of extraterritorial jurisdiction in the treaty ports, provides (Article 21) that "subjects of China who may be guilty of any criminal act towards citizens of the United States shall be arrested and punished by the Chinese authorities according to the laws of China; and citizens of the United States who may commit any crime in China shall be subject to be tried and punished only by the Consul, or other public functionary of the United States, thereto authorized, according to the laws of the United States."[1]

This stipulation apparently formed the basis of the jurisdictional clause (Article 27) of the treaty between China and France, signed at Whampoa, October 24, 1844, but there are certain differences. While the American treaty speaks of crimes committed by citizens of the United States "in China," the French treaty speaks of crimes and offenses committed by Frenchmen "in the five ports."[2] This limitation was, however, removed by the French treaty (Article 38) of June 27, 1858, which substitutes for the phrase "five ports" the

[1] 31 *British and Foreign State Papers*, 132 *et seq.*; 32 *ibid.*, 791 *et seq.*
[2] 34 *British and Foreign State Papers*, 1298 *et seq.*

words "in China."[3] Another difference is that the French treaty stipulated that French offenders should be "arrested" by the Consul. The American treaty provided that American offenders should be "tried and punished" by the Consul or other public functionary of the United States, but said nothing as to their arrest. That this silence implied that the power to arrest was not taken from the Chinese authorities is a supposition confirmed by the treaty between the United States and China, concluded at Tientsin, June 18, 1858, which expressly stipulates (Article 11) that "arrests in order that trial may be made by either the Chinese or the United States authorities."[4]

Since 1844 the jurisdictional provisions of the treaties have followed either the French or the American model. In harmony with the French treaties, in denying to China the right of arrest; are the German Treaty of September 2, 1861; the Danish Treaty of July 13, 1863; the Belgian Treaty of November 2, 1865; the Italian Treaty of October 26, 1866; the Austro-Hungarian Treaty of September 2, 1869; the Brazilian Treaty of October 3, 1881; and the Mexican Treaty of December 14, 1899. In harmony with the American treaty, in permitting China to share the right of arrest, are the Swedish and Norwegian Treaty of March 20, 1847; the British Treaty of June 26, 1858; the Russian Treaty of June 1–13, 1858; the Spanish Treaty of October 10, 1864; the Portuguese Treaty of December 1, 1887; and the Japanese Treaty of July 21, 1896.

Now we come to the subject of the civil jurisdiction in cases between Chinese and aliens. On this subject it is to be noticed that the provisions of the treaties concluded between China and the foreign powers are as a whole similar in meaning and very often somewhat similar in language. Two modes of settling mixed controversies are provided by Article 13 of the general regulations which is incorporated into the British Compact of October 8, 1843. When the British Treaty of June 26, 1858, was made, this article was abrogated but its contents were incorporated into Article 17 of the new compact. By this Article it provides that "a British subject having reason to complain of a Chinese must proceed to the consulate and state his grievance. The Consul will inquire into the merits

[3] 51 *ibid.*, 637 *et seq.*

[4] Koo, V. K. W., *The Status of Aliens in China*, pp. 168–169.

of the case and do his utmost to arrange it amicably. In like manner, if a Chinese have reason to complain of a British subject, the Consul shall no less listen to his complaint and endeavor to settle it in a friendly manner. If disputes take place of such a nature that the Consul cannot arrange them amicably, then he shall request the assistance of the Chinese authorities, that they may together examine into the merits of the case and decide it equitably." Thus, by the one, amicable method, and by the other, a prosecution of a suit to be decided by the authorities of the two nations, are provided for in the treaty for the settlement of controversies between the subjects of the two countries, and the same system is provided for in the treaties with Austria-Hungary, Belgium, Brazil, Denmark, France, Germany, Italy, Japan, Mexico, the Netherlands, Portugal, Russia, Spain, and Sweden and Norway.

By Article 24 of the American Treaty of July 3, 1844, provisions are made that "if citizens of the United States have special occasion to address any communication to the Chinese local officers of the Government, they shall submit the same to their Consul, or other officer, to determine if the language be proper and respectful, and the matter just and right; in which event he shall transmit the same to the appropriate authorities for their consideration and action in the premises. In like manner, if subjects of China have special occasion to address the Consul of the United States, they shall submit the communication to the local authorities of their own Government, to determine if the language be respectful and proper, and the matter just and right; in which case the said authorities will transmit the same to the Consul, or other functionary, for his consideration and action in the premises. And if controversies arise between citizens of the United States and subjects of China, which cannot be amicably settled otherwise, the same shall be examined and decided conformably to justice and equity by the public officers of the two nations acting in conjunction." Article 16 of the same treaty provides that "the Chinese Government will not hold itself responsible for any debts which may happen to be due from subjects of China to citizens of the United States, or for frauds committed by them; but citizens of the United States may seek redress in law; and on suitable representation being made to the Chinese local authorities through the Consul, they will cause due examination in the premises, and take all proper steps to compel satisfac-

tion. But in case the debtor be dead, or without property, or have absconded, the creditor cannot be indemnified according to the old system of the co-hong, so-called. And if citizens of the United States be indebted to subjects of China, the latter may seek redress in the same way through the Consul, but without any responsibility for the debt on the part of the United States."

This American Treaty of 1844 was replaced by the Treaty of June 18, 1858. By Article 24 of the new treaty, it provides that "where there are debts due by subjects of China to citizens of the United States, the latter may seek redress in law; and on suitable representations being made to the local authorities, through the Consul, they will cause due examination in the premises, and take proper steps to compel satisfaction. And if citizens of the United States be indebted to subjects of China, the latter may seek redress by representation through the Consul, or by suit in the Consular Court; but neither Government will hold itself responsible for such debts." Article 28 of the Treaty of 1858 is identical to Article 24 of the Treaty of 1844, with the following addition: "The extortion of illegal fees is expressly prohibited. Any peaceable persons are allowed to enter the court in order to interpret, lest injustice be done."

In the American treaties there is to be found a third mode for the settling of mixed controversies. Seeking redress by representation through the Consul is different from that by suit in the Consular Court, as by Article 24 of the Treaty of 1858 it clearly provides that redress may be secured either "by representation through the Consul or by suit in the Consular Court."

Among these three modes of settling controversies between Chinese and aliens in the treaty ports, amicable settlement has always been in practice as the most workable method. This is due to the fact that the foreign element in the ports is always small when comparing with the Chinese residents, and moreover in the past it has been the customs and practices among the merchants in China to settle their disputes in the guilds.[5] Mr. I. F. Shepard, American Consul at Hankow, once stated:

Several cases have been brought to me by Chinamen for breach of civil contract by Americans—for non-payment of wages claimed and for moneys

[5] 61 *British and Foreign State Papers*, 159; 56 *ibid.*, 667; 72 *ibid.*, 560; 61 *ibid.*, 171; 34 *ibid.*, 1298; 51 *ibid.*, 637; 51 *ibid.*, 1248; 61 *ibid.*, 144; 88 *ibid.*, 473; 60 *ibid.*, 766; 78 *ibid.*, 521; 53 *ibid.*, 966; 60 *ibid.*, 474; 56 *ibid*, 1097; 32 *ibid.*, 791; *United States Foreign Relations*, 1879, pp. 224–225.

due in various ways. As the official of the defendant, I have, in every separate case, been enabled to bring matters to a satisfactory settlement by conference and advice without the necessity of any formal trial. Thus no occasion has arisen for either party to demand an appeal nor for me to call for a formal judicial sitting with a native official, either as a court of the defendant with a Chinese magistrate advising, or as a mixed court . . .

§ 2. *Criminal and Civil Jurisdiction in Cases Between Aliens.*

The first statement of the exemption of aliens in China from Chinese jurisdiction in criminal and civil cases arising between themselves may be found in the American Treaty of 1844, which provides (Article 25) that "all questions in regard to rights, whether of property or person, arising between citizens of the United States in China, shall be subject to the jurisdiction of, and regulated by the authorities of their own Government," and that "all controversies occurring in China between citizens of the United States and the subjects of any other Government shall be regulated by the treaties existing between the United States and such Governments, respectively, without interference on the part of China." These clauses are reproduced in Article 27 of the American Treaty of 1858.[6]

Precisely similar stipulations were incorporated in Article 25 of the Treaty of 1847 with Sweden and Norway,[7] Article 15 of the Treaty of 1858 with Great Britain,[8] Article 40 of the Treaty of 1869 with Austria-Hungary,[9] Article 20 of the Treaty of 1865 with Belgium,[10] Article 11 of the Treaty of 1881 with Brazil,[11] Article 15 of the Treaty of 1863 with Denmark,[12] Article 39 of the Treaty of 1858 with France,[13] Article 39 of the Treaty of 1861 with Prussia,[14] Article 15 of the Treaty of 1866 with Italy,[15] and Article 15 of the Treaty of 1899 with Mexico.[16] Dr. Koo in his monograph [17] stated:

[6] 32 *British and Foreign State Papers*, 791.
[7] 56 *ibid.*, 1097.
[8] 48 *ibid.*, 47.
[9] 61 *ibid.*, 159.
[10] 56 *ibid.*, 667.
[11] 72 *ibid.*, 560.
[12] 61 *ibid.*, 171.
[13] 51 *ibid.*, 637.
[14] 51 *ibid.*, 1248.
[15] 61 *ibid.*, 144.
[16] 88 *ibid.*, 473.
[17] V. K. W., Koo., *The Status of Aliens in China*, p. 179.

With regard to controversies in China in which Chinese subjects are not involved, the principle which China observes is that of non-intervention. Questions of rights, whether personal or of property, arising in China between subjects of the same treaty power are subject to the jurisdiction and regulated by the authorities of their own government. Those occurring in Chinese territory between the subjects of two different powers are disposed of in accordance with the provisions of treaties existing between them. In such cases the general practice is that they are arranged officially by the consuls of both parties without resort to litigation; but where amicable settlement is impossible, the principle of jurisdiction followed is the same as in those between China and a foreign power, namely, that the plaintiff follows the defendant into the court of the latter's nation.

§ 3. *Foreign Courts and the British System of Foreign Jurisdiction in the Treaty Ports.*

The tribunal, which the treaty-powers ordinarily provide for the exercise of jurisdiction over their respective subjects in the treaty ports, is the Consular Court. Each Consular Court is presided over by a Consul, who, by virtuè of the powers conferred upon him by the laws of his nation, hears and decides cases between his nationals and those in which the latter are defendants. Some powers provide for the exercise of appellate or original jurisdiction by their ministers at Peking, other authorize an appeal from their Consular Courts to their colonial or home courts; and as the exercise of the jurisdiction conceded by the treaties is regulated by the statutes of the countries to which the concession is made, the powers of the ministers and consuls vary with the laws of their respective countries. For instance, the Russian and Spanish laws provide that, where grave crimes are committed, the offenders must, after a summary inquiry, be sent to their respective countries for trial and punishment.[18] As the result of the fact that the foreign courts not only are numerous but also vary in their powers, the situation as regards the administration of justice has become very complicated. As early as 1879, when the foreign community at Shanghai was much smaller and conditions were much simpler than they are now, the United States Consul-General wrote: "The multiplicity of courts established in Shanghai may be fairly said to constitute the most

[18] De Clerq and De Vallet, *Guide pratique des Consulats*, vol. ii, p. 600; Article 8 of the Russian Treaty of November 2–14, 1860; Article 13 of the Spanish Treaty of October 10, 1864.

cumbersome judicature known to exist in any considerable center in the world."[19]

Among the earlier acts of the British Parliament relating to foreign jurisdiction, that of 1843 is notable as being the first which undertook to regulate the subject fundamentally and in its entirety. This and subsequent enactments were consolidated in the British Foreign Jurisdiction Act of 1890. This Act, after reciting that the British Crown has "by treaty, capitulation, grant, usage, sufferance, and other lawful means," acquired "jurisdiction within divers foreign countries," declares that it shall be lawful for the Crown "to hold, exercise, and enjoy" any such jurisdiction then or thereafter possessed "within a foreign country, in the same and as ample a manner as if Her Majesty had acquired that jurisdiction by the cession or conquest of territory."[20] The Act is also declared to extend to British subjects resident in or resorting to a country not subject to a Government from which the Crown might obtain jurisdiction in the manner above recited; and, in all cases, anything done in a foreign country in the exercise of the jurisdiction defined in the Act is declared to be "as valid as if it had been done according to the local law then in force in that country." In effect the Act gives or confirms certain legislative powers exercised or to be exercised by the Crown in Council in regulation of the foreign jurisdiction.[21] It also provides (Section 4) that "if in any proceeding, civil or criminal, in a court in Her Majesty's dominions or held under the authority of Her Majesty any question arises as to the existence or extent of any jurisdiction of Her Majesty in a foreign country, a Secretary of State shall, on the application of the court, send to the court within a reasonable time his decision on the question, and his decision shall for the purposes of the proceeding be final." Then it (Section 6) provides in detail under what forms of law the Crown in Council may authorize the transfer of criminal offenders from foreign to British possessions and may also provide for their trial within those possessions. Further it provides that "if any Order in Council made in pursuance of this Act as respects any foreign country is in any respect repugnant to the provisions of any Act of Parliament ex-

[19] Mr. Bailey to Mr. Seward, September 15, 1879, *United States Foreign Relations*, 1879, p. 231.

[20] 53 and 54 Vict., cap. 37.

[21] Hall, *Foreign Powers and Jurisdiction of the British Crown*, p. 9; Piggott, *Exterritoriality*, p. 26.

tending to Her Majesty's subjects in that country, or repugnant to any order or regulation made under the authority of any such Act of Parliament or having in that country the force and effect of any such Act, it shall be read subject to that Act, order, or regulation, and shall, to the extent of such repugnancy, but not otherwise, be void;" that "an Order in Council made in pursuance of this Act shall not be, or be deemed to have been, void on the ground of repugnancy to the law of England unless it is repugnant to the provisions of some such Act of Parliament, order, or regulation as aforesaid;" and that it (Section 14) shall be lawful for the Crown in Council to make any law that may be necessary for the Government of the British subjects on board any vessel at a distance of not more than 100 miles from the coast of China.

The foregoing sketch of the Act of Parliament respecting foreign jurisdiction is enough to indicate how little direct legislation has been included in it and to suggest that in confirming the Orders in Council made or that should be made in pursuance of the act and in conformity with it, Parliament designed to leave practically the entire provision for and regulation of the foreign jurisdiction to the Crown in Council. As a rule, each of these Orders in Council applies to one country alone. Consequently, the Orders have been voluminous, both because of the number of the countries where the jurisdiction has been exercised and because of frequent revisions. The more recent Orders are much longer and in greater detail than the earlier. They contain in elaborate form the adaptations of English law which experience has shown to be necessary for the protection and control of the long-established and wide-spread interests of British subjects residing or trading in the Orient. In general, their field is no less extensive than that occupied by the other and somewhat similar Orders in Council for the government of the Crown colonies.

Under the Order in Council respecting China and Corea of October 24, 1904,[22] another development of foreign jurisdiction took place. After dealing with various matters relating to its own application and interpretation,[23] the Order,[24] defines the constitution and powers of "His Britannic Majesty's Supreme Court for China

[22] *London Gazette*, October 28, 1904.
[23] Articles 1–6.
[24] Articles 7–18.

and Corea." This court consists of a judge and as many assistant judges as may be appointed by warrant under the royal sign manual. Any two judges sitting together may constitute "the Full Court;" and, where only two judges are sitting, if a difference arises between them, the opinion of the Judge, or, in his absence, the Senior Assistant Judge, prevails.[25] In case of a vacancy in the office of Judge, or in case of his illness or incapacity, or of his absence from the district of the Consulate of Shanghai, the Secretary of State may appoint a fit person to act in his place, the Assistant Judge or Senior Assistant Judge having meanwhile the power to act. An Acting Judge possesses, during the continuance of his appointment, all the power and authority of the Judge.[26] In case of a vacancy in the office of an Assistant Judge, or in case of his absence, or illness, or other incapacity, the Judge may, by writing under his hand and the seal of the Supreme Court, appoint any fit person, approved by the Secretary of State, or by the British Minister at Peking, to act in his place; but such an appointment may be revoked either by the Judge or by the Secretary of State.[27] The Supreme Court has also a sheriff, a Crown advocate, a registrar, a chief clerk, a marshal, and such other officers and clerks under such designations as the Secretary of State thinks fit.[28] The sheriff is given the powers and authorities of the sheriff of a county in England, with all the privileges and immunities of the office, and is in charge with the execution of all decrees, orders, and sentences made and passed by the Supreme Court, on the requisition in that behalf of the Supreme Court; and he is to be entitled to such fees and costs as the Supreme Court may direct.[29] The Supreme Court is to sit ordinarily at Shanghai; but may, if it seems expedient, sit at any other place within the limits of this Order, and may at any time transfer its ordinary sittings to any such place as the Secretary of State approves; and the Judges may sit at the same time at different places, and each sitting shall be deemed to be a sitting of the Supreme Court."[30] Then it provides that "the Judge, or, under his directions, an Assistant Judge, may sit, in a magisterial or judicial capacity, any place in China or

[25] Article 7.
[26] Article 8.
[27] Article 9.
[28] Article 12.
[29] Article 13.
[30] Article 17.

Corea, and there inquire of, or hear and determine, any case, civil or criminal, and may examine any records or other documents in any Provincial Court, and give directions as to the keeping thereof."[31] In providing for the British Provincial Courts it says that every commissioned consular officer, with the exception of those at Shanghai and with such other exceptions, if any, as the Secretary of State thinks fit to make, shall for and in his consular district hold and form a court, in this Order referred to as a Provincial Court; that where the British Minister in China or Corea, appoints any person to be Acting Consul-General, Consul, or Vice-Consul at any port or place in China or Corea which is for the time being open to foreign trade, and at which no commissioned consular officer is resident, that person shall hold and form a Provincial Court for the district for which he is appointed to act; that every Provincial Court shall be styled "His Britannic Majesty's Court at Canton" (or as the case may be); and that every Provincial Court may, with the approval of the Judge of the Supreme Court, appoint a competent person, or persons, to perform such duties and to exercise such powers in and for that Court as are by this Order and any rules of Court imposed or conferred upon the Registrar and Marshal respectively, and any person so appointed shall perform such duties and exercise such powers accordingly.[32] The jurisdiction of the courts are then defined.[33] The Supreme Court, and each Provincial Court, are, in the exercise of every part of its jurisdiction, Courts of Record.[34] The Crown's jurisdiction, civil and criminal, including any jurisdiction by this Order conferred expressly on a Provincial Court, is for and within the district of the consulate of Shanghai vested exclusively in the Supreme Court as its ordinary original jurisdiction;[35] but all the Crown's jurisdiction, civil and criminal, not under this order vested exclusively in the Supreme Court, is to the extent and in the manner provided by this Order vested in the Provincial Courts.[36]

§ 4. *The American System of Foreign Jurisdiction in the Treaty Ports.* The first legislation of the United States for regulating and defining the judicial functions of ministers and Consuls of the United

[31] Article 18.
[32] Article 19.
[33] Articles 20–31.
[34] Article 20.
[35] Article 21.
[36] Article 22.

States was approved on August 11, 1848. The next statute, which was more comprehensive than that of 1848, was approved on June 22, 1860.

The legislation of August 11, 1848, and June 22, 1860, were amended by the Acts of July 28, 1866, July 1, 1870, March 23, 1874, and February 1, 1876. These enactments are all consolidated in the Revised Statutes of the United States, Sections 4083–4130.[37]

In the Revised Statutes of the United States, provisions are made to the effect that these statutes are to be applied to China, Japan, Siam, and many other countries.[38] By these provisions ministers and Consuls are invested with judicial authority so far as the treaties allow.[39] This authority extends in criminal matters to the trial and punishment of offenses committed by American citizens, and in civil matters to all controversies between American citizens or others, so far as the treaties provide.[40] The jurisdiction of the minister in civil matters and also in criminal matters, except in capital cases for murder, or insurrection, or for offenses amounting to felony, is appellate only, unless the consular officer is interested either as a party or as witness.[41]

The jurisdiction, both civil and criminal, must be exercised in accordance with the laws of the United States; or if they be unsuitable or deficient, with the common law and the law of equity and admiralty; or if all these do not furnish appropriate and sufficient remedies, with decrees and regulations having "the force of law" which the ministers may make to supply such defects and deficiencies.[42] The ministers in making decrees and regulations are required to take the advice of such Consul in their respective countries as may be consulted without prejudicial delay or inconvenience. The consuls thus consulted are required to signify their assent or dissent in writing. The minister may then cause the decree or regulation to be published, together with the opinions of his advisers; if he does so, the decree or regulation becomes obligatory till it is annulled or modified by Congress; and he is required, as speedily

[37] Moore, *Digest of International Law*, vol. ii, p. 613 *et seq.*
[38] Revised Statutes, sections 4083–4130.
[39] Revised Statutes, section 4083.
[40] Revised Statutes, sections 4084–4085.
[41] Revised Statutes, section 4109.
[42] Revised Statutes, section 4086.

as may be after publication, to transmit the papers to the Secretary of State to be laid before Congress for revision.[43]

The consul sitting alone may decide all cases where the fine imposed does not exceed $500, or the term of imprisonment ninety days.[44] But if legal perplexities are likely to arise or if the punishments are likely to exceed those specified, he must summon from one to four, and in capital cases not less than four, American citizens to sit as associates in the trial.[45] If any of the associates differs from the consul the case must be remitted to the minister.[46] Capital cases for murder or insurrection against the Government or for offenses against the public peace amounting to felony, may be tried by the minister, but if tried by a consul, there can be no conviction unless the consul and his associates all concur in it and the minister approves.[47] The minister may also issue writ to "prevent the citizens of the United States from enlisting in the military or naval service . . . to make war upon any foreign power with whom the United States are at peace, or in the service of one portion of the people against any other portion of the same people; and he may carry out this power by a resort to such force belonging to the United States, as may at the time be within his reach."[48]

In civil cases the consul sitting alone may render judgment where the damages demanded do not exceed $500, but when the damages exceed that amount, or the case involves legal perplexities, he must summon two or three citizens of the United States, if such are residing at the port, to sit with him as associates in the trial.[49]

In criminal cases an appeal lies to the minister (1) where the consul sits with associates and one of them differs from him; and (2) where the consul sitting alone imposes a fine of more than $100 or imprisonment of more than sixty days.[50] From the sentences of the minister to China or Japan, whether original or appellate, an appeal lies to the United States Circuit Court in California.

[43] Revised Statutes, sections 4117–4119.
[44] Revised Statutes, section 4089.
[45] Revised Statutes, section 4106.
[46] Revised Statutes, section 4106.
[47] Revised Statutes, sections 4090, 4102.
[48] Revised Statutes, section 4090.
[49] Revised Statutes, section 4107.
[50] Revised Statutes, sections 4089, 4091, 4105, 4106.

In civil cases an appeal lies to the minister where one of the associates differs from the consul.[51] In China and Japan an appeal lies to the minister where the matter in dispute exceeds $500 but not $2,500; where it exceeds $2,500, an appeal lies to the United States Circuit Court in California.[52] Where the matter in dispute exceeds $2,500, a similar appeal is allowed from any final judgment of the minister to China or Japan, given in the exercise of original jurisdiction.[53]

In 1881 President Arthur stated in his annual message that changes in the system were desirable, and he transmitted an opinion of Secretary of State Blaine in regard to the direction which these changes might profitably take.[54]

In 1882 Mr. Frelinghuysen, Secretary of State, writing to Mr. Windom, Chairman of the Foreign Relations Committee of the Senate, on the importance of such legislation, stated that a comparison of the legislation of the United States with that of Great Britain and France would "probably be sufficient to satisfy the committee how far the American in these foreign colonies fails to receive from his Government the protection which is accorded to other foreigners."[55] Accompanying this letter there was a draft of a bill drawn by Mr. Bancroft Davis, Assistant Secretary of State, and Mr. O'Connor, Solicitor of the Department of State, which proposed the creation of three district courts for China, at Shanghai, Tientsin, and Canton, respectively, and a fourth for Japan, but with a Supreme Court over all at Shanghai; and provided for appeals from the consular courts to these tribunals instead of to the Minister at Peking or the United States District Court in California.[56] This bill was much modified in the Senate. Another was introduced in the House in 1884, but, beyond a report upon it, no action was taken. On April 5, 1906, an Act was enacted by Congress for the reorganization of the consular services of the United States, which only indirectly affects the exercise of foreign jurisdiction.

[51] Revised Statutes, section 4095.

[52] Revised Statutes, section 4093.

[53] Revised Statutes, section 4094.

[54] Senate Miscellaneous Document, 21, vol. i, 47th Congress, First Session; Moore, *Digest of International Law*, vol. ii, pp. 593–653.

[55] *Ibid.*, 89, vol. i, p. 3, 47th Congress, First Session.

[56] *Ibid*, 89, vol. i, p. 210, 47th Congress, First Session; House Report, 2250, pp. 1–8, 48th Congress, Second Session.

During the first session of the Fifty-ninth Congress there was introduced in the Senate a bill for the establishment of a United States Court for China. On March, 1906, Congressman Edwin Denby, of Michigan, son of a former minister to China, introduced a bill in the House, and his success in persuading his colleagues of the necessity of creating the United States Court for China depended chiefly on his prestige as having a very intimate knowledge of the international relations of China. The bill was reported in the Senate with much amendment, and it was finally approved as the Act of June 30, 1906. On the same date, a separate Act was passed providing the appropriation for the salaries of the officials of this Court.

The Act of June 30, 1906, establishing a United States Court for China declares that "be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that a court is hereby established, to be called the United States court for China, which shall have exclusive jurisdiction in all cases and judicial proceedings whereof jurisdiction may now be exercised by the United States Consuls and Ministers by law and by virtue of treaties between the United States and China, except in so far as the said jurisdiction is qualified by Section 2 of this Act. The said court shall hold sessions to Shanghai, China, and shall also hold sessions at the cities of Canton, Tientsin, and Hankow at stated periods, the dates of such sessions at each city to be announced in such manner as the court shall direct, and a session of the court shall be held in each of these cities at least once annually. It shall be within the power of the judge, upon due notice to the parties in litigation, to open and hold court for the hearing of a special cause at any place permitted by the treaties, and where there is a United States consulate, when, in his judgment, it shall be required by the convenience of witnesses, or by some public interest. The place of sitting of the court shall be in the United States consulate at each of the cities, respectively." The United States Consuls in the cities of China to which they are respectively accredited have the same jurisdiction as they now possess in civil cases where the sum or value of the property involved in the controversy does not exceed $500 and in criminal cases where the punishment for the offense charged cannot exceed by law $100 fine or sixty days' imprisonment, or both, and have power to arrest, examine, and discharge accused

persons or commit them to the said court.[57] From all final judgments of the consular court either party has the right of appeal to the United States Court for China, provided, also "that appeal may be taken to the United States court for China from any final judgment of the consular courts of the United States in Korea so long as the rights of extraterritoriality shall obtain in favor of the United States." The United States Court for China is to exercise supervisory control over the discharge by consuls and vice-consuls of the duties prescribed by the laws of the United States relating to the estates of decedents in China. It also provides that "that appeals shall lie from all judgments or decrees of said court to the United States Circuit Court of Appeals of the ninth judicial circuit, and thence appeals and writs of error may be taken from the judgments or decrees of the said circuit court of appeals to the Supreme Court of the United States in the same class of cases as those in which appeals and writs of error are permitted to judgments of said court of appeals in cases coming from district and circuit courts of the United States;" and that "said appeals or writs of error shall be regulated by the procedure governing appeals within the United States from the district courts to the circuit courts of appeal, and from the circuit courts of appeal to the Supreme Court of the United States, respectively, so far as the same shall be applicable; and said courts are hereby empowered to hear and determine appeals and writs of error so taken."[58] The jurisdiction of said United States court, both original and on appeal, in civil and criminal matters, and also the jurisdiction of the consular courts in China, is in all cases to be exercised in conformity with said treaties and the laws of the United States now in force in reference to the American consular courts in China, and all judgments and decisions of said consular courts, and all decisions, judgments, and decrees of said United States Court, must be enforced in accordance with said treaties and laws; but in all such cases when such laws are deficient in the provisions necessary to give jurisdiction or to furnish suitable remedies, the common law and the laws as established by the decisions of the courts of the United States are to be applied by said court in its decisions and are to govern the same subject to the terms of any treaties between the United States and China.[59] The

[57] Section 2.
[58] Section 3.
[59] Section 5.

procedure of the said court is to be in accordance, so far as practicable, with the existing procedure prescribed for consular courts in China in accordance with the Revised Statutes of the United States; provided, however, that the judge of the said United States Court for China is to have authority from time to time to modify and supplement said rules of procedure.[60] Further, it provides that the provisions of Sections 4106 and 4107 of the Revised Statutes of the United States allowing consuls in certain cases to summon associates shall have no application to said court. There are a district attorney, a marshal, and a clerk in the said court, with authority possessed by the corresponding officers of the district courts in the United States as far as may be consistent with the conditions of the laws of the United States and said treaties; and the judge of said court and the district attorney, who must be lawyers of good standing and experience, and the marshal and the clerk are to be appointed by the President, by and with the advice and consent of the Senate.[61] The tenure of office of the judge of said court is ten years, unless sooner removed by the President for cause; and the tenure of office of the other officials of the court is at the pleasure of the President.[62] The marshal and the clerk of said court are to be required to furnish bond for the faithful performance of their duties, in sums and with sureties to be fixed and approved by the judge of the court.[63]

In the earlier stages of its work, the court was confronted with many of the difficulties which for years had hampered the administration of American law in China. Such difficulties as actually existed must be attributed very largely, if not entirely, to the American dual system of federal and state laws. The laws extended by Congress to China have always been assumed to be the general laws of the United States and not those of any particular state. The great difficulty with which the United States Court for China have had to contend is the application of this general law to conditions in China. Thus the laws of the various states were not taken into consideration in a judicial decision. In 1907 a criminal case arose in the United States Court for China which was destined to have far-reaching effects upon the administration of American law

[60] Section 5.
[61] Section 6.
[62] Section 7.
[63] Section 8.

in China. In this case the defendant was charged with having obtained money under false pretenses. His counsel set up the defense that the United States Court for China was without jurisdiction to try him for such alleged crime because the act of obtaining money or goods by false pretenses was not an offense at common law, and was not then made a crime by the laws of the United States. It was thus not then, and is not now, made a crime by any statute of the United States or the Criminal Code of the United States in force since January 1, 1910, although it is a criminal offense by statute in every state in the Union. This case was taken on appeal to the United States Circuit Court of Appeals and some extremely interesting results followed. The Court of Appeals in stating its opinion said:[64]

The United States Court for China was created by Act, June 30, 1906, c. 3934, 34 Stat. pt. 1, p. 814 (U. S. Comp. St. Supp. 1907, p. 797), and by Section 1 of that Act was given "exclusive jurisdiction in all cases and judicial proceedings whereof jurisdiction may now be exercised by United States Consuls and Ministers by law and by virtue of treaties between the United States and China, except in so far as the said jurisdiction is qualified by Section 2 of this Act." Section 4 of the same Act provides:

The jurisdiction of said United States Court, both original and on appeal, in civil and criminal matters, and also the jurisdiction of the Consular Courts in China, shall in all cases be exercised in conformity with said treaties and the laws of the United States now in force in reference to the American Consular Courts in China, and all judgments and decisions of said Consular Courts, and all decisions, judgments, and decrees of the United States Court, shall be enforced in accordance with said treaties and laws. But in all such cases when such laws are deficient in the provisions necessary to give jurisdiction or to furnish suitable remedies, the common law and the law as established by the decisions of the courts of the United States shall be applied by said court in its decisions and shall govern the same subject to the terms of any treaties between the United States and China.

The law in relation to the jurisdiction of Consular Courts at the date of the passage of the Act creating the United States Court for China is found in Section 4086 of the Revised Statutes (U. S. Comp. St. 1901, p. 2769), and is as follows:

Jurisdiction in both civil and criminal matters shall in all cases, be exercised and enforced in conformity with the laws of the United States, which are

[64] 156 *Federal Reporter*, 759–765; *North-China Herald*, July 5, 1907; *The Judicial Code of the United States* in force January 1, 1912, p. 82; *The Criminal Code of the United States* in force January 1, 1910.

hereby, so far as is necessary to execute such treaties, respectively, and so far as they are suitable to carry the same into effect, extended over all citizens of the United States in those countries, and over all others to the extent that the terms of the treaties, respectively, justify or require. But in all cases where such laws are not adapted to the object, or are deficient in the provisions necessary to furnish suitable remedies, the common law and the law of equity and admiralty shall be extended in like manner over citizens and others in those countries.

The United States, by its treaty with China, acquired extraterritorial jurisdiction in civil controversies between its citizens residing in China, and in respect to all crimes committed by its citizens residing there, and Congress, in the statutes above referred to, provided tribunals to exercise such jurisdiction, "in conformity with the laws of the United States," and when these laws "are not adapted to the object, or are deficient in the provisions necessary to furnish suitable remedies," then in accordance with the common law. The object of the treaty and the intention of Congress, in creating the United States Court for China, in so far as that court is given criminal jurisdiction, was to throw around American citizens residing or sojourning in China, and there charged with crime, the beneficent principles of the laws of the United States relating to the trial of persons charged with crime—the rules of evidence, the presumption of innocence, the degree of proof necessary to convict, the right of the accused to be confronted with witnesses against him, exemption from being compelled to incriminate himself, etc. But, while securing to them these privileges, the statute at the same time, made them subject to punishment for acts made criminal by any law of the United States, or for acts recognized as crimes under the common law.

This brings us to the consideration of the question whether obtaining money or goods by false pretenses is an offense which may be thus punished, if committed by an American citizen in China. This particular kind of cheating was not a crime under the ancient common law. It was first so declared in the year 1757 by Statute 30, Geo. II, Chapter 24. Bishop on Criminal Law (Third Edition) Volume 2, Section 392. "Under this statute for the first time the crime ceased to depend on the particular kind of pretense used; the statute being couched in terms broad enough to include the use of any false pretense whatever, although, as will appear later, the judges, in construing the statute, excepted certain classes of pretenses from it. It was this statute that created the crime now commonly known as obtaining goods under false pretenses. Several statutes have been enacted in England since the Statute of 30 Geo. II to supply defects found therein, but its general provisions, in so far as they defined the crime, remain unchanged." 19 Cyc. 387.

If the Statute of 30 Geo. II, and those amendatory of it, which were in force at the date of the separation of the American colonies from the mother

country, are to be considered as a part of the common law to which Congress referred in the enactment above quoted, the jurisdiction of the court over the offense of obtaining money under false pretenses would be undoubted; and we are of opinion that in making the common law applicable to offenses committed by American citizens in China, and the other countries with which we have similar treaties, Congress had reference to the common law in force in the several American colonies at the date of the separation from the mother country, and this included not only the ancient common law, the *lex non scripta*, but also statutes which had theretofore been passed amendatory of or in aid of the common law. Thus Mr. Bishop, in his work on Criminal Law (Section 155): says.

The rule is familiar to the legal profession that colonists to an uninhabited country carry with them the laws of their mother country, as far as applicable to their new situation and circumstances; and that, in their new home, the laws thus taken with them, whether in the mother country they were written or unwritten, are regarded as unwritten, or common law.

And in the second edition of Cooley's *Constitutional Limitations*, (page 25), the author of that great work says:

The colonies also had legislatures of their own, by which laws had been passed which were in force at the time of the separation, and which remained unaffected thereby. When therefore they emerged from the colonial condition into that of independence, the laws which governed them consisted: First, of the common law of England, so far as they had tacitly adopted it as suited to their condition, second, of the statutes of England or of Great Britain, amendatory of the common law, which they had in like manner adopted; and third, of the colonial statutes. The first and second constituted the American common law, and by this in great part are rights adjudged and wrongs redressed in the American states to this day.

But in holding that the court below had jurisdiction of the information upon which the defendant was tried, it is not necessary for us to rest our decision entirely upon the proposition that obtaining money or goods under false pretenses is an offense at common law, within the meaning of the statute conferring jurisdiction upon the United States Court for China, as we are clearly of opinion that such as act is a crime under the laws of the United States.

It is true, there is no general statute applicable to every state in the Union, making this an offense against the United States; nor could there be, in view of the fact that under our system of government the right to punish for such acts committed within the political jurisdiction of the state is reserved to the several states. But in legislating for territory over which the United States exercises exclusive legislative jurisdiction, Congress has made the act of obtaining money under false pretenses a crime. Thus, in Section 54 of Title 1,

Part 1, of the Act passed March 3, 1899 (Chapter 429, 30 Statute 1260), entitled, "an act to define and punish crimes in the district of Alaska and to provide a code of criminal procedure for such district," Congress has enacted that obtaining money or property from another by any false pretense shall constitute a crime, subjecting the offender to punishment by imprisonment in the penitentiary not less than one year nor more than five years. So, also, under Section 842 of the Act of March 3, 1901, entitled "an act to establish a code of law for the District of Columbia," obtaining from any person anything of value by means of false pretenses is made a crime, and, where the value of the property so secured is $35 or upwards, subjects him to imprisonment not less than one year nor more than three years; or if less than that sum, to a fine not more than $200, or imprisonment for not more than six months, or both. Chapter 834, 31 Statute 1326.

In addition to these statutes, Section 2 of the Act of July 7, 1898 (Chapter 576, 30 Stat. 717; U. S. Comp. St. 1901, p. 3652), which is, in substance, a reenactment of Section 5391, Revised Statutes, provides:

That when any offense is committed in any place, jurisdiction over which has been retained by the United States or ceded to it by a state, or which has been purchased with the consent of a state for the erection of a fort, magazine, arsenal, dockyard or other needful building or structure, the punishment for which offense is not provided for by any law of the United States, the person committing such offense shall, upon conviction in a circuit or district court of the United States for the district in which the offense was committed, be liable to and receive the same punishment as the laws of the state in which such place is situated now provide for the like offense when committed within the jurisdiction of such state, and the said courts are hereby vested with jurisdiction for such purposes; and no subsequent repeal of any such state law shall affect any such prosecution.

Under this statute, any act committed in any place under the jurisdiction of the United States, if made an offense by the laws of the state in which such place is situated, when committed elsewhere in the state, is an offense against the United States, and punishable as in the state law provided. Sharon *v.* Hill (C. C.) 24 Fed. 731; U. S. *v.* Wright, Fed. Cas. No. 16, 774; U. S. *v.* Pridgeon, 153 U. S. 48–53, 14 Sup. Ct. 746, 38 L. Ed. 631.

At the date of the passage of the Act of July 7, 1898, just quoted, the act of obtaining money or goods by false pretenses was made a crime by the laws of most of the states of the Union, and is, therefore, under this statute, also made a crime against the United States, in all places over which the United States exercises exclusive legislative jurisdiction, within the several states, having laws provided for the punishment of such an act as a crime.

In view of the legislation of Congress to which we have referred (the acts relating to Alaska and the District of Columbia, and the statute of July 7,

1898), our conclusion is that obtaining money or goods under false pretenses is an offense against the laws of the United States, within the meaning of the statute conferring jurisdiction upon the United States Court for China, and that an American citizen guilty of the commission of such an act in China is subject to trial and punishment therefor by that court.

§ 5. *The Mixed Courts at Shanghai.*[65]

At the conference of the ministers to China in 1879, the subject of judicial proceedings in mixed cases was very ably presented by George F. Seward, the American Minister at Peking. From the special reports of consuls, it was found that in actual practice the settlement of a claim against a Chinese debtor by resorting to a Chinese court was next to impossible, and that the Chinese law was deficient in remedies. An authority on Consular Jurisdiction in the Orient wrote:[66]

In consequence, when a friendly settlement out of court could not be brought about, the consul was almost unavoidably obliged to undertake to prescribe to the Chinese magistrate what judgment to pronounce. Thus, although the treaties required that the decision be made by the judge of the defendant's nationality, a form of mixed court was being developed by usage. In fact, there was a tendency on the part of some of the foreign ministers themselves to favor the adoption of a system of mixed courts. The success of the international tribunals in Egypt was held forth as an example of what might be done in China. But the American Minister and his British colleague were disinclined toward this proposition for the reason that conditions in China differed so essentially from those in Egypt as to offer no guarantee of success. Egypt was comparatively a small country, foreign interests were well centralized and the nature and methods of European jurisprudence were better known to the officials of the Egyptian Government. In China the distances between the open ports were very great, the foreign residents were more widely segregated from the native population; and the governing classes in China had not yet acquainted themselves with western law and judicial practice. A system of mixed courts at that time and for China as a whole was therefore deemed impracticable.

[65] It is believed that Mixed Courts are at first suggested to be established in all the treaty ports. But as a matter of fact, the Mixed Courts of the Shanghai International Settlement and that of the Shanghai French Concession are the only tribunals of that kind in existence. Although it is provided in the Kulangsu Land Regulations of January 10, 1902, for the establishment of a court on the lines of the Mixed Court at Shanghai, yet as far as I can find none has ever been established in the port. (See *Supra*, Chapter 6, Section 6, Regulation 12.)

[66] F. E. Hinckley, *American Consular Jurisdiction in the Orient*, p. 159.

Furthermore, Mr. Seward, having in mind the policy initiated by Mr. Burlingame,[67] was persuaded of the advisability of favoring the development of a national system of jurisprudence for China upon western principles of law; and with that ultimate end in view, while proposing that the rule of the treaties requiring trial and judgment by the court of the defendant should be strictly adhered to, he recommended that the conference express a desire to the Tsungli Yamen for the following improvements: (1) That Chinese courts be designated in which complaints of foreigners could be heard and determined; (2) that the right of the foreigner to appear in these courts in person and with witnesses be secured, and that compulsory process to compel the attendance of native witnesses be allowed; (3) that the consul of the complainant be entitled to be present in court to assist in placing the evidence before it; (4) that records of all the proceedings, evidence, opinions and judgment be kept.[68] An additional memorandum upon the Chinese or so-called Mixed Court at Shanghai was submitted to the conference.[69] Mr. Seward's entire report was unanimously adopted and a joint note of the ministers communicating their views was sent to the Tsungli Yamen on November 10, 1879.[70] In reply the Chinese authorities expressed themselves conservatively, and declined to take immediate steps for the betterment of the Chinese courts.[71] Yet in the course of years the lines of improvement suggested in the conference of 1879 have been followed, and the unanimous agreement of the ministers to uphold strictly the rule of the treaties, requiring that in mixed cases a Chinese defendant be tried by a Chinese judge, the

[67] *Treaties and Conventions concluded between the United States of America and other Powers*, since July 4, 1776, edited by John H. Haswell (1889), p. 1257. In his notes to the Treaties of the United States, Mr. Bancroft Davis said: "On the 15th of June, 1864, Burlingame instructed the Consul-General at Shanghai respecting 'the extent of the rights and duties of American citizens under the Treaty, and the regulations made in pursuance thereof' (3 *Diplomatic Correspondence*, 1864, 426), and he added, 'I have submitted the above letter to the British, French, and Russian Ministers, and they authorize me to inform you they entirely approve its views and policy.' (*Ibid.*, 430.) Burlingame described the policy he was prescribing as 'an effort to substitute fair diplomatic action in China for force.' (*Ibid.*, 430.) When this important action was communicated to Mr. Seward, Secretary of State, he wrote, 'It is approved with much commendation'."

[68] *United States Foreign Relations*, 1880, pp. 140, 143, 145–157.

[69] *Ibid.*, 1880, pp. 157–162.

[70] *Ibid.*, 1880, pp. 165–167.

[71] *Ibid.*, 1880, pp. 189–191, 223–235.

foreign consul being restricted to assisting in bringing evidence before the magistrate and having no right to interfere with his decision in the case, undoubtedly contributed much to the preservation and development of the jurisdiction of China in respect to the claims of foreigners.[72]

The Mixed Court of the International Settlement at Shanghai is the best of its type in the territorial jurisdiction of China. Its history goes back to 1866, when Mr. Alabaster, the British Vice-consul at Shanghai, drew up a set of rules which was adopted by the Taotai and the consular body.

The Mixed Court at Shanghai might be styled, with more exactness, the Chinese court for the foreign settlements at Shanghai. Prior to its institution, Chinese offenders, arrested by the police of the English and American settlements, were sent by the English or the American Consul to the Chinese district magistrate, with a written statement of the offense charged. Criminal charges other than those brought by the police and all civil complaints were laid before the Taotai or magistrate by the consul concerned, by letter, and were decided by the native official, usually after an *ex parte* examination of the accused without the appearance of his accuser. This condition of things proved to be intolerable, and the consular body at Shanghai, in 1864, moved for a reform. It seemed to the consuls of that time that it was desirable to secure: (1) The appointment of a native officer to act as magistrate of first instance in all minor complaints, civil and criminal, brought by aliens against Chinese at the port, including cases reported by the foreign police; (2) recognition of the right to delegate foreign officers to sit with the native magistrate so appointed in order to watch the proceedings, and to assist the plaintiffs in the presentation of their complaints; (3) an understanding with the intendant of circuit, under which he would hear graver matters personally, assisted by the chief consular officer of the alien concerned, and also appeals from the decision of the magistrate of the Mixed Court.

These proposals in the form of rules formulated by Sir Harry Parkes and Mr. George F. Seward, acting as a committee of the consular body, were laid before the intendant of circuit, who approved them, and appointed a wei-yuen, or deputy, to act as magis-

[72] 72 *British and Foreign State Papers*, 1015–31; Hinckley, *American Consular Jurisdiction in the Orient*, p. 160.

trate. Various attempts were made during the ensuing three or four years to place the court upon a more satisfactory basis, and more particularly to secure for it the recognition of the Peking Government. These efforts after much diplomatic correspondence, culminated in the establishment of the regulations for the Mixed Court which were approved by the foreign legations at Peking in 1868. These regulations provided that an officer of the rank of sub-prefect should be deputed to reside within the settlement, who should have jurisdiction of all cases, criminal and civil, in which Chinese were concerned as defendants, saving grave criminal offenses, which were to be dealt with by the magistrate of the district; and that, when a foreigner was concerned, an appeal might be taken to the Taotai, if the alien was dissatisfied with the judgment of the court of first instance. In practice, however, criminal cases of less importance than those contemplated by the rules, particularly those in which foreigners were not directly concerned, were referred to the district magistrate; and many important civil cases were heard by the Taotai, assisted by the mixed court magistrate and sometimes by the latter alone.

On April 20, 1869, Mr. W. H. Medhurst, British Consul at Shanghai, published the rules for the Mixed Court of the International Settlement at Shanghai, acting under the instructions from the British Minister at Peking. By the provisions of these regulations for the Mixed Court, the magistrate of this court is given power to decide all civil and commercial suits between Chinese residents within the settlements, and also between Chinese and foreign residents, in cases where Chinese are defendants, by Chinese law; and he is to be authorized to examine Chinese judicially, to detain them in custody, and to punish them by putting them in the cangue, by flogging, and other minor punishments (Rule I). Where a foreigner is concerned in a cause to be tried, a consul or his deputy shall sit with the sub-prefect at the trial, but where Chinese only are concerned the sub-prefect shall adjudicate independently—the consuls shall not interfere (Rule 2). Where a defendant is a native in foreign employ, the sub-prefect will first communicate particulars to the consul of the nationality concerned, who will be bound to place the parties before the court without attempting to screen or conceal them; a consul or his deputy may attend the hearing, but he shall not interfere if no foreign interest is involved; and the

servants of non-trading consuls shall not be arrested unless with the sanction of their masters (Rule 3). In cases where Chinese subjects are charged with grave offenses punishable by death and the various degrees of banishment, where, by Chinese law, a local officer with an independent seal would send up the case for revision by the provincial judge, who would submit it to the high authorities, to be by them referred to the Board of Punishment, it will still be for the district magistrate of Shanghai to take action (Rule 4). A Chinese criminal escaping to the foreign settlements can be summarily arrested by the sub-prefect without warrant from the district magistrate or aid from the municipal police (Rule 5). Suits between natives and foreigners shall be decided equitably and impartially, and in accordance with treaties; the treaty provision is to be followed in cases where the foreigner has a consul, but when the foreigner has no consul, the sub-prefect, sitting with a foreign consular assessor, shall try the case, submitting the decision for the consideration of the Taotai; and should either party to the case be dissatisfied with the sub-prefect's decision, application for a new trial must be made to the Taotai or to the proper consul (Rule 6). Foreigners who may be charged with any offense, if represented by consuls on the spot, shall be dealt with by them as the treaties provide, but unrepresented foreign offenders will be tried and sentenced by the sub-prefect, the finding being submitted for the Taotai's approval, who will consult with some Treaty Power consul on the subject; and that where the offenders are Chinese, the sub-prefect will inflict the proper legal punishment (Rule 7). The necessary staff of translators, linguists, writers, and servants, will be engaged by the sub-prefect, as also a foreigner or two for general purposes, by whom, also, foreign offenders having no consul, will be brought to trial or kept in custody when necessary; all expenses are to be drawn from the Taotai monthly; and acts of extortion or any annoyance on the part of any of the employers shall be severely punished (Rule 8). The sub-prefect shall keep a daily certified record of arrests made and cases tried, giving the names of the parties arrested and recording the grounds of decision in each case; this shall be open to the inspection of the superior authorities; and should the sub-prefect be inefficient or notorious he will be denounced and removed from office, another being appointed in his place (Rule 9). When the sub-prefect has tried a case, should it

be ascertained that plaintiff's charge was false or exaggerated, said plaintiff, whether native or foreigner, shall, on conviction, be mulcted by the sub-prefect in accordance with the rules which will be jointly drawn up by the sub-prefect and consuls, and submitted for the Taotai's approval; and in the interests of justice, native and foreigner must in this respect be treated with perfect impartiality (Rule 10).[78]

Besides the Mixed Court of the International Settlement at Shanghai, there is another Mixed Court at the same port. This Mixed Court of the French concession, unlike the other Mixed Court, has only one assessor, who is always a French consular officer. On June 10, 1902, certain rules were agreed upon for defining the respective jurisdiction of these Mixed Courts of the International and French Settlements. It provides that (Rule 1) in all civil cases between Chinese, the plaintiff will follow the defendant, and will sue him before the Mixed Court of the defendant's residence; that (Rule 2) in all criminal cases of Chinese against Chinese, where foreigners are not concerned, and in all police cases against Chinese residents in the Settlements, the Mixed Court of the Settlement in which the crime or contravention has been committed is alone competent; that (Rule 3) if the plaintiff is a foreigner (not of French nationality) and the Chinese defendant is a resident of the International Settlement, he is to be sued before the Mixed Court of the International Settlement; that if the plaintiff is French and the Chinese defendant is a resident of the French Settlement, he is to be sued before the Mixed Court of the French Settlement; that if the plaintiff is a foreigner (not of French nationality) and the Chinese defendant is a resident of the French Settlement, the latter shall be sued before the Mixed Court of the International Settlement, whose warrant or summons for his appearance, after countersignature by the French Consul-General, will be executed or served by the runners of the International Mixed Court, with the assistance of the police of the French Settlement, without previous hearing in the Mixed Court of the French Settlement; that if the plaintiff is French and the Chinese defendant is a resident of the International Settlement, the latter shall be sued before the Mixed Court of the French Settlement, whose warrant or summons for his appearance, after countersignature by the senior consul, will be executed

[78] *United States Foreign Relations*, 1880, pp. 162–163.

or served by the runners of the French Mixed Court, with the assistance of the police of the International Settlement, without a previous hearing in the Mixed Court of the International Settlement; and finally that (Rule 4) in criminal cases where a foreigner (not of French nationality) is complainant, the Mixed Court of the International Settlement is competent; that if a Frenchman is complainant, the Mixed Court of the French Settlement is competent.[74]

In 1904 amendments to the Rules for the Mixed Court of the International Settlement at Shanghai were suggested by the diplomatic corps at Peking to the Board of Foreign Affairs. The amendments accompanied a joint note of December 22, 1904, to Prince Ch'ing.[75] The Prince immediately instructed the superintendent of trade for the south to order the Shanghai Taotai to make a thorough investigation of the matter; and on November 28, 1905, the superintendent made a report in which several changes in the proposed amendments were suggested. The diplomatic corps then offered certain counter-amendments, and later the Nanking Viceroy made a new draft. In a letter of July 3, 1906, to Mr. Rockhill, the American Minister at Peking, Prince Ch'ing, commending the Viceroy's proposals as being calculated to promote the orderly government of the settlement, suggested that they be put in force for a period of two years, after which, if their operation was attended with any difficulty, they might be modified. On August 4, 1906, Prince Ch'ing made a similar communication to the diplomatic corps. This body, however, on the 14th of the same month, presented a counter-draft; and as this did not lead to an agreement, the previous condition of things has remained unchanged.[76]

After the outbreak of the Revolution of October 10, 1911, the Taotai at Shanghai being no longer recognized by the *de facto* government, the consular body, assuming full control there, posted up, on November 11, 1911, in front of the International Mixed Court, a proclamation [77] for the maintenance of the "interests of the Settlements," which declared:

[74] *Parliamentary Papers*, China, No. 2, (1903).

[75] *U. S. Foreign Relations*, 1906, Part I, pp. 372–373.

[76] *United States Foreign Relations*, 1906, Part I, pp. 373–407; *North-China Daily News*, January 23–24, 1906; *North-China Herald*, February 2, 1906.

[77] *North-China Herald*, November 18, 1911.

As the Chinese merchants and residents in the Settlements are very great in number, their cases of litigation, whether civil or criminal, have been disposed of by a specially inaugurated Mixed Court. Now, for the safeguarding of the public peace of the settlement, the most essentially important step would be to ensure the continuation of the functions exercised by the Mixed Court and its gaol. Therefore the consular officials of the Treaty Powers issue this proclamation for the information of both the Chinese and foreign merchants and peoples that the consuls of the powers, after due consideration of the aspect and position of affairs. and by the rights and power vested in them in their official capacity, hereby recognize temporarily the three officials, Kuan Chun, Wang Chia-hsi and Nih Tsung-hsi, who have already performed duties of the Mixed Court, as magistrates of the Mixed Court, to continue their functions in an amicable manner by following and accompanying the foreign Assessors appointed by the Consuls. They also permit the police of the foreign Municipal Councils of the Settlements of Shanghai to take charge of the gaol of the Mixed Courts, as well as to execute energetically the summonses and warrants issued by the Mixed Courts and already signed and sealed by the consuls concerned, in connection with civil and criminal cases; and the orders which have been customarily signed and sealed by the assessors interested; and also to assist in the upholding of the legitimate power of the court to the best of their ability.

Thus we proclaim for the information of the Chinese merchants and residents in the Settlements, that although the general position in Shanghai at present is not yet settled, those good people, who pursue their business peacefully and who have enjoyed all along special privileges of the Settlements, will still not suffer the least loss. If there are lawless miscreants, threatening to use force to you, vainly thinking to interfere with your business, . . . they shall be arrested and punished most severely, without the least leniency or pardon . . .

On December 22, 1911, Mr. D. Siffert, the senior consul at Shanghai, reported to Sir J. Jordan, Dean of the Diplomatic Corps at Peking, several measures adopted by the consular body to secure the proper working of the Mixed Court of the International Settlement "in the absence of any established form of Chinese Government." By these measures the three magistrates were confirmed in the exercise of their functions, under the guidance of and in concert with the foreign assessors; and the prisons attached to the court were placed in charge of the municipal police, to whom was also committed the service of summonses and warrants. Inquests were to be held by the Mixed Court magistrate and a foreign assessor; all criminal offenses committed in the settlement were to be dealt

with by the Mixed Court, including those deserving more than five years' imprisonment; the Municipal Council were to supervise the financial administration of the Mixed Court on behalf of the consular body, and receive the proceeds of all fines and pay all expenses and salaries, except that of the magistrate's, as the latter's salary was to be paid by the consular body out of the Chinese Government's funds then in the hands of the senior consul; foreign assessors were to watch the hearing of purely Chinese civil cases.[78]

The serious disturbance of the situation at Shanghai by the Revolution is very vividly pictured by Mr. E. D. Fraser, the British Consul-general, in a note, of February 10, 1912, to Sir J. Jordan, the British Minister at Peking, as follows:[79]

Soon after the revolution started Wu Ting-fang notified us of the officers of the new administration. They included a military governor of the Shanghai army, but no officer to replace the Taotai. On the 19th of November, this governor wrote to the senior consul that he had appointed a Mr. Hsu, formerly interpreter to the Italian lawyer Musso, and a Mr. Tsai as commissioners for international affairs, and these two tried to interfere in Mixed Court matters. On the 16th of January Mr. Wen Tsung-yao informed us that he was commissioner of trade and foreign affairs by appointment of the President, Sun; and in conversation he assured me that he was the only local authority thus duly appointed, and that Hsu had been warned off. Hsu, however, remained in the Yamen in the city of the self-appointed military governor, and recently sent a launch which seized a British cargo-boat loading ammunition for the Russian gun-boat *Mandjour*, at Hankow, on to a Japanese river steamer. Mr. Wen's efforts to get the capture returned succeeded only after the lapse of a week, and I had privately to ask Mr. Wilkinson to move the President to have the powers and functions of the republican officers here put on a proper footing before even this success was attained.

The various authorities have, however, no subordination, and no head to whom effective appeal can be made to redress wrongs, such as the holding to ransom of respectable native residents in the settlement. The military governor is quite superfluous, as the troops are under their own generals and the garrison under an ex-convict, while the Woosung Forts are a separate command.

Money is raised by force subscription supplemented by contribution from abroad . . .

The absence of any duly recognized native authority with whom we can hold official relations has naturally caused great inconvenience, especially in

[78] *Parliamentary Papers*, China, No. 3 (1912), p. 138.
[79] *Ibid.*, China, No. 3 (1912) pp. 201–202.

regard to the Mixed Court, and the transfer of land inside and outside the Settlement.

At the end of November the military governor's commissioner for foreign affairs suggested a system for the rendition of offenders, and the production of witnesses wanted in the Mixed Court and in revolutionary courts outside the Settlement, but the scruples of some members of the consular body prevented any arrangement being come to.

The awkward position thus created gave the senior magistrate, Kuan, an excuse for applying for and accepting for himself and his two assistants appointment and seal at the hands of the new rulers; but this step he recalled at the instance of the consular body.

More recently the question of appeals in civil cases heard in the Mixed Court has come up. The acting Italian Consul-General maintains that under his treaty which contains a provision identical with Article 17 of our Treaty of Tientsin, the only appeal is to himself assisted by Chinese authorities. Others have suggested the court of consuls, or the consul-general concerned with two others as assessors, or that the chairman of the Chinese Chamber of Commerce replace the Taotai; but none of these proposals meet the obvious difficulties, that no one can enforce a judgment on a party to a suit in an extraterritorial place except that party's own national authority, and that the republicans are not likely to let their commissioner for foreign affairs be passed over in favor of the head of a concern semi-official at best. Litigants in the Mixed Court are not bound to surrender the right of appeal, and to accept a rehearing before several of its judges in lieu thereof. The result must be delay, if not injustice, until Mr. Wen is recognized as taking the Taotai's place.

As regards land the republicans do not object to the consular body's arrangement within the Settlement, but beyond its limits they demand that deeds shall be stamped by their commissioner, who shall also decide as to the payment of sheng-ko, and of rates for land in excess of title-deed area.

I do not think any of the persons immediately concerned would object to the republican proposals, provided they were sure that in the event of the present *de facto* administration being upset the validity of their titles under its officer's seal could not be called in question.

The only objection, and it is a serious objection, would arise were we to let the new Government appoint the magistrates of the Mixed Court, since native residents would thereby be laid open to enforced contributions to republican funds. There would, however, in my opinion not be any difficulty at present, at least in postponing any interference with the present provisional arrangement regarding that court with the improved working of which all classes of Chinese are content, or in preventing the reappearance of the abolished runners, who were and would be the instruments of irregular pressure on native residents.

Meanwhile, a circular [80] was issued by Dr. Wu Ting-fang to all military governors, in which certain regulations to be observed in matters affecting the foreign settlements at Shanghai and other treaty ports were declared to be in force. By these regulations, provisions were made to the effect that the officers hitherto appointed by the Manchu dynasty to the Mixed Court at Shanghai were for the most part a degenerate lot who fostered rank corruption, and when the city seceded to the republican cause the court set up for itself, and did not come again under our control; that this sort of proceeding properly called for challenge, and some scheme by which the court's authority could be wrested back was vitally imperative; and that the Bureau of Foreign Affairs at Shanghai should therefore make it its business to negotiate to that end with the foreign consuls, subsequently selecting suitable officers to administer the court, and gradually work out a revision of its rules.[81]

On January 9, 1913, the *Government Gazette* at Peking published certain Presidential Orders, which were designed to create uniformity in the form of local government of China. By these orders the Chinese title of "the old intendants of circuit" or Taotais was altered, but the extent of their jurisdiction remaining the same as formerly, and in provinces where the post of Taotai was abolished the chief administrative authority might, if the circumstances required it, establish intendants of circuit under the new title.[82] All subdivisions of a province, whether prefectures, sub-prefectures, departments, or districts, were in future to be styled 'districts'; the chief administrative authority in each was to be the district magistrate; and in every district where a Court of Justice had not yet been established, one to three assistant judges might be appointed by the judiciary organization commission.[83] The various titles previously existing for the commissioners of Foreign Affairs were altered to that of Foreign Affairs delegates of the Board of Foreign Affairs, and such delegates were only to be appointed at the more important treaty ports; the place of all commissioners of law or justice at present existing was to be taken by a judiciary organization commission in each province; and the Foreign Office delegates, chiefs of judiciary organization commissions, controllers of

[80] *Parliamentary Papers*, China, No. 3 (1912) pp. 203–204.
[81] Regulation 4.
[82] Order No. 4.
[83] Order No. 5.

customs, and salt commissioners were to be appointed by the President on submission of names by the Premier at the request of the head of the ministry concerned.[84] Under a separate order it was directed that all the above orders should be carried out by March, 1913; and that they were provisional and should only remain in force until regulations were passed by the National Council.[85]

In a despatch, No. 592, dated March 16, 1917, from the Taliyuan (the National Supreme Court of the Chinese Republic) to the High Court of the Province of Kiangsi, there is a very interesting point affecting the validity or effectiveness of the decisions given by the Mixed Court of the International Settlement at Shanghai in cases of litigation which also concern the interior towns of China. As this is a point of law of the most importance, a full translation of the Taliyuan's despatch[86] is given below:

In reply to your telegram forwarding a query from the Kiukiang District Court of Justice, which reads: "Can the same defendant for the same criminal offense, after having been tried and sentenced by the Shanghai Mixed Court, be prosecuted again by the procurator and tried again by this court as provided in Article 6 of the Criminal Code? Please forward this and ask for explanation," this court finds that the Shanghai Mixed Court system was based on the Yangkingpang Mixed Court Regulations promulgated in the 7th year of Tung Chih (1869) and it was a special system resulting from the treaty terms. Since the said Mixed Court, in hearing and deciding civil and criminal cases, is supposed to be, in accordance with the treaty, exercising China's judicial power in Chinese territory, that its decisions should not be regarded in the light of decisions of a foreign court is quite clear. However, since the year Hsin Hai (1911), the said court has been under the control of the Consular Body on our behalf, and since the laws quoted and applied as authorities at the said court have also not been what was stipulated in the treaty, the effectiveness of the treaty in question has therefore been stultified and suspended owing to obstacles in practice. As such obstacles in practice have never been formally recognized by the Chinese Government as valid in our international intercourse, then it is equally clear that its decisions arrived at in this manner can certainly not be regarded as decisions given by a Chinese Court in the sense as provided in the treaty. In the same way, all decisions rendered by any office which does not exercise judicial power in the eye of the Chinese law, or by any individual in the same position, cannot be accepted

[84] Order No. 6.

[85] *Parliamentary Papers*, China, No. 1 (1914) pp. 13–14.

[86] *North-China Herald*, March 31, 1917.

as effective in law, although that office or that individual may actually try and decide lawsuits.

Therefore, in respect of any case decided by the Mixed Court, if also under the jurisdiction of a court at another place, the rule that a single case should not be twice accepted for trial may not apply. Although it would be out of the question to apply Article 6, stipulating disregard of a decision by a court in a foreign country, to such a case, yet, whenever the defendant has not yet received any sentence in accordance with our law, the procurator in whose jurisdiction the defendant lives should certainly be permitted to prosecute him as demanded by law. This court gives this ruling in order to maintain our judicial power for the benefit of all. Please take note and act accordingly.

Chapter VIII

Conclusion

On the whole, the development of the treaty ports has been an interesting part of the diplomatic history of China. It has marked step by step the advance of Occidental progressiveness as against Oriental conservatism. In 1842, Canton, Amoy, Foochow, Ningpo, and Shanghai, the premier five, were opened as treaty ports. The whole gamut of human aspiration, success and failure has been run through in these five alone. Of them all, Shanghai alone has been constantly expanding. Canton is not what it once was—the great port of China. The tea trade of Foochow has declined. Amoy has preserved its importance, but progress there has been extremely slow. Ningpo by all foreigners except the shipowner is almost abandoned. Of the five additional ports opened in 1858, Taiwan is now Japanese, while Newchwang, Chefoo, Kiungchow and Swatow have never been much more than 'one-horse places'. Of those opened since 1860 Hankow and Tientsin are the only important ports, where advancement has been rapid. Of the rest, some are promising, but the future of most of them is doubtful.

Of late years the tendency of the alien settlers has been towards separate concessions. In Shanghai, an attempt has been made to concentrate, but it has embraced only two settlements, now known as the International Settlement, as the French have not cared to combine. But in Tientsin, Hankow, and other treaty ports the tendency has been towards separation. The British, French, German, and Japanese have each their plot of land at Tientsin, while at Hankow the same four are adjoined by Russia. By their treaty after the China-Japan War, the Japanese likewise acquired strips at Newchang, Hangchow, Soochow, and other treaty ports.

The cause of the establishment of separate concessions is national jealousy and the desire for the national administration of each concession. Serious difficulties, it is true, usually attend such administration. But how shall we solve this problem, which is not only vital to the Chinese but also to all alien settlers in the treaty ports.

The method that I am going to propose is not a new one, but is based on historical tendencies, which furnish the only sure foundation for the practical association of different groups of human beings. This method, which depends upon the effective cooperation of the treaty powers and China, involves, on the one hand, the relinquishment by the powers of their "quasi-territorial jurisdiction," and, on the other hand, the improvement by China of her system of jurisprudence so as to afford convincing assurances of an acceptable administration.

The reasons for relinquishing extraterritorial jurisdiction are based on history. When any portion of oriental territory comes into the absolute possession of a European power, as when Hongkong was ceded to Great Britain in 1841, when the extreme eastern and western districts of Turkey passed under Russian and Austrian dominion in 1878, and when Madagascar was declared a French colony in 1896, the necessity of extraterritorial jurisdiction ceases, but the native law is not wholly supplanted. The actual conditions at the particular place must be taken into account, and perhaps the main part of the native law must be retained and preserved. In British India, the ancient and elaborate system of native law, mostly Mohammedan, exists side by side with the common law and the statutes, so far as these have been extended to India by Act of Parliament.[1] Similarly, in Algiers, where extraterritorial jurisdiction ceased in 1830 when the Dey of Algiers surrendered the city to the commander of the French army; and although in 1870 the country became a department of France coequal with those in Europe, both the ancient Mohammedan law and law of French origin have continued to be administered by the French and the native courts.[2]

The one nation of the East which has so developed its system of jurisprudence, adapted and codified its laws, and improved its administration of justice, as to convince the western states of the advisability of withdrawing their foreign jurisdiction, is Japan. In 1872, at the end of the stipulated period of fourteen years when negotiations for the revision of the treaties was to be undertaken at the desire of either party, the Japanese Emperor sent a large embassy, consisting of Prince Iwakura, who was Minister of Foreign Affairs, and the statesmen, Kido, Okuba, Ito, Yamagutsi and others, to

[1] Ilbert, *The Government of India*, p. 124.
[2] Leroy-Beaulieu, *L'Algérie et la Tunisie*, p. 266.

America and Europe in order that they might study western institutions and propose revision of the treaties. But the existing treaties, with their low customs tariff of five per cent., were considered more advantageous by the western powers than any new treaties likely to be accepted by Japan. Moreover, while there were prospects of improving the Japanese system of jurisprudence by the adoption of western principles of law, they were still far from being ready to replace in practice. Therefore, the only course open to the Japanese leaders, who realized that their nation would suffer "oppression by treaty," if the treaties of 1858 continued in force, was to develop the national institutions until they should command the respect of the western powers. This they accomplished through the ever increasing influence of merchants and others who were adopting western ways in the management of various enterprises; moreover, encouragement in the publication of newspapers was given and a national system of modern education instituted. In 1875 the Emperor convoked popular assemblies to which he confided responsibility for local government. Meanwhile the administration of the central government was remodelled. For this purpose the services of able and experienced officials under other governments were retained by Japan. With the assistance of foreign jurists the laws were revised and the courts reorganized. The new codes of criminal law and procedure followed the model of the codes of France, the codes of civil and commercial law and civil procedure, the codes of Germany. These codes came into operation gradually, but in 1899 they had already acquired full force. In 1889 the Japanese constitution was promulgated.[3] There was obstinately some doubt among foreigners resident in Japan whether the Japanese Government would be able to secure to them under new treaties, and without the operation of consular courts, the same degree of protection they were enjoying under the treaties of 1858, and such apprehension was expressed by American and British residents in Japan even as late as the year preceding the inception of the new treaties for relinquishing the foreign jurisdiction in the treaty ports of Japan.[4] Notwithstanding the continued protests of Japan against the irreg-

[3] *Parliamentary Papers*, Japan, No. 1 (1894); *Revue du droit international*, 1893, p. 338; 11 *Yale Law Journal*, 296, 363; *United States Foreign Relations*, 1889, pp. 535–538.

[4] *United States Foreign Relations*, 1898, pp. 450–464.

ularities and evils of the extraterritorial system, the European Governments had again in 1878 refused to consider revising the treaties. In that year, however, the United States made a treaty conditionally acknowledging the right of Japan over her own import tariffs. In 1886, Count Inouye called a conference of the Foreign Ministers at Tokio, and after deliberations prolonged into the following year, finally ventured, upon his own responsibility, to concede that for all trials involving foreigners there should be a court made up of a majority of foreign judges sitting with the Japanese judges. The foreign ministers then demanded the right to choose these foreign judges and to prescribe what law and procedure and what manner of executing judgments should be followed. At this there was an outburst of general indignation among the Japanese and Count Inouye lost his leadership in politics. During the conference the American Government had shown a friendly attitude by concluding the treaty of extradition of April 29, 1886. In submitting it to the Senate, President Cleveland said that the treaty had been made partly because of the support which its conclusion would give to Japan in her efforts towards judicial autonomy and complete sovereignty.[5] The draft of a new treaty proposed by Count Okuma to Marquis of Salisbury, the British Secretary of State for Foreign Affairs, in 1889, contemplated that, for a period of five years from the conclusion of the treaty, consular jurisdiction should be territorially limited to the six foreign settlements, and to the open ports and other localities in which foreigners were permitted to reside; that outside of these localities Japan should have full jurisdiction, and that upon the expiration of the five-year period consular jurisdiction and extraterritorial privileges were to cease throughout the territory of Japan, and the Japanese courts were thereafter to assume and exercise full jurisdiction. The proposed treaty was to contain rules for further determining the jurisdiction of the Japanese and British courts during the five-year period. In advance of the abolition of the consular courts, British subjects were to be permitted to submit to the jurisdiction of Japanese courts by filing written declarations of their desire at the British consulates. It was also proposed, in the draft of a diplomatic note, that Japan should appoint a number of foreign jurists to act in the capacity of judges in the Supreme Court of Japan. The British counter-draft of the

[5] *Senate Ex. Journal.*, vol. xxv, p. 495.

treaty and of the diplomatic note contained essentially the same provisions, but expressed them in entirely different language. Some months later Viscount Aoki, Minister of Foreign Affairs, informed Mr. Fraser, the British Minister at Tokio, that his Government desired the elimination from the proposed treaty of the provision for foreign judges in the Japanese tribunals, and, as a reason for this change, it was shown that the adoption of this measure would cause the vesting of rights and the growth of usages which it would be as difficult to modify as were the treaties of 1858, and that the judicial organization of Japan would, at the end of the five-year period, be of nearly a quarter of a century's standing, with perfect independence and permanence under the guarantees of the constitution of 1889. Japan desired also that the proposed stipulations concerning the codification and promulgation of the laws of the Empire and the stipulations granting the right to acquire real estate should be withdrawn, and that a reservation in reference to the right of aliens to be placed upon a national footing should be introduced. The counter proposal by Lord Salisbury of June 5, 1890, consisted of a commercial treaty with a protocol annexed, providing for the cessation of jurisdiction at the expiration of a minimum period of five years upon condition that, before the jurisdiction should be discontinued, the Japanese codes, then being elaborated should have been in satisfactory operation for a continuous term of twelve months.[6]

During the negotiations with Great Britain, whose interests predominated in Japan, the Japanese government also made proposals of treaty revision to the United States, Russia, and Germany. The American Government, while disposed to be favorable to the project of revision, regarded the favorable action of Great Britain as essential to its success, and in reliance upon this friendly attitude of the United States, Japan made her chief efforts with Great Britain. Russia, it was believed, was willing to accept a treaty resembling the British draft of 1889, while Germany insisted upon its own form of convention. The principal causes of delay in the latter part of the negotiations appear to have been the postponement of placing the new code fully in operation and the changes in the political leadership and the ministry. The British treaty, essentially following the draft of June 5, 1890, but including the

[6] *Parliamentary Papers*, Japan, No. 1 (1894), pp. 1–24.

provision for relinquishment of jurisdiction in the body of the treaty instead of in a protocol, was signed at London, July 16, 1894, by Lord Kimberley and Viscount Aoki. The American treaty was signed at Washington by Mr. Gresham, Secretary of State, and Mr. Shinichiro Kurino, the Japanese Minister, November 22, 1894. The example of Great Britain and the United States was soon followed by the other treaty powers. These new treaties came into force in 1899. On June 30, 1899, the Emperor issued a proclamation [7] in which the following passages occur:

> In regard to the revision of the treaties, our long-nourished wishes have at length, by means of a satisfactory agreement with the Treaty Powers, attained their end. Considering that the revised treaties are now about to come into force, we may regard this moment with joy and hearty satisfaction; and, while on the one hand we recognize the responsibilities which the altered state of things imposed on the Empire, on the other we hope that the new conditions will contribute to build up our friendly relations with the Powers on a basis yet firmer than before. We expect, therefore, from our loyal subjects, ever as they are ready to discharge their public duties, that, in accordance with our wishes and the enlightened principles of our national policy, they will without exception receive in a kindly spirit the strangers who come to us from distant lands, and will thus strive to raise the national reputation and maintain the dignity of the Empire.

With Japan as a successful model, China's chance of success in inducing the Powers to relinquish their foreign jurisdiction is exceedingly great. But the only basis upon which justice to the foreign residents in China would permit the relinquishment of extraterritorial privileges is that upon which the jurisdiction was withdrawn in Japan. A documentary statement of this ground of withdrawal is to be found in the treaties between China and Great Britain, the United States and Japan. The Treaty signed at Shanghai, September 5, 1902, between China and Great Britain, reads in Article 12, as follows: "China having expressed a strong desire to reform her judicial system and to bring it into accord with that of Western nation, Great Britain agrees to give every assistance to such reform, and she will also be prepared to relinquish her extraterritorial rights when she is satisfied that the state of the Chinese laws, the arrangement for their administration, and other consid-

[7] *Parliamentary Papers*, Japan, No. 1 (1894) p. 68 *et seq.*; *United States Foreign Relations*, 1899, pp. 467–478.

erations warrant her in so doing."[8] A declaration in substantially identical terms is included in Article 11 of the Japanese Treaty of October 8, 1903,[9] and in Article 15 of the American Treaty of October 8, 1903.[10]

The judicial administration of China is now in a state of transition. The New Civil, Criminal and Commercial Codes have not yet been promulgated, but their compilation has been completed with the assistance of Japanese experts. In the meantime the old laws of China, except in so far as they have been abrogated or modified by recent legislation, or are contrary to the constitution, are the law of the land. Under the old system practically every provincial official, except those having no territorial jurisdiction, exercised judicial as well as administrative functions. This to a large extent accounted for the hopeless inefficiency and maladministration of the law courts. Bribery and torture were the rule rather than the exception, and justice was difficult, if not impossible, to obtain on its merits. The cruelties practised in the yamens and prisons, and the barbarous methods of punishment employed, gave the treaty powers an excuse to claim extraterritorial jurisdiction over their own nationals. The new system provides for officials with purely judicial powers, but any attempt to train an efficient judiciary must prove abortive until the new codes have taken the place of the old laws. Four kinds of courts are provided in the new scheme *viz.*, (1) The High Court of Justice (Taliyuan) at Peking, which is the Supreme Court of Appeal for the whole of China, but is subdivided into the Civil and Criminal Courts, each of which is presided over by a bench of five judges; (2) The Provincial High Court (Kao-teng-shen-pan-ting), established in each Provincial Capital, which is the Supreme Court of the Province and decides important civil and criminal cases and also appeals from the District Courts, and the bench consists of from three to five judges; (3) The Metropolitan Courts (Ti-fang-shen-pan-ting), established in each Fu, which deal with ordinary civil and criminal cases and appeals from the Courts of First Instance, and the bench consists of three judges for appeals, or one for cases of first instance; (4) The Courts of First Instance (Chu-chi-shen-pan-ting), which are to be established in

[8] 95 *British and Foreign State Papers* 39 *et seq.*
[9] 96 *ibid.*, 578.
[10] 97 *ibid.*, 721.

each Hsien throughout the country to deal with minor criminal and civil cases, one judge presiding over each Court.

Meanwhile prison administration has undergone a radical change. The scheme for its reform was placed in actual operation in many great cities as soon as the republican form of government was first established, and in 1912 the Minister of Justice made a report on this scheme, of which the following is a summarized translation:

Gaols are an essential part of Judicial administration and machinery. The system of Chinese prison administration, which is a very defective one, has been employed for centuries. The prisons have been dark and insanitary, the treatment of prisoners has been barbarous, so that our prison administration has become a byword throughout the civilized world. During the latter years of the Manchu Dynasty the abuses of the present prison system were recognized, and plans for reform were proposed. Now that the Republic has been inaugurated the prison system must be reformed in accordance with the principles of humanity. The punishments hitherto employed must be modified, and the gaols must be reformed. Moreover, owing to the fact that our prison system and our system of administration of justice are not up to the standard of Western civilization, Western nations decline to treat us upon an equal footing, and claim the right of exterritorial jurisdiction over their subjects—a fact which is humiliating to the Republic. When I (the Minister of Justice) visited Washington, I attended the International Prisons Conference, where I studied the prison systems of other countries, and the tendencies of modern prison administration. I consider that the reform of the Chinese prison system is an urgent matter. It should not be attempted upon too large, nor upon too small a scale, taking into consideration the present financial situation. About seven years will be required to complete prison reforms in the twenty-two provinces. During the coming winter a conference of judicial authorities will be summoned at the Ministry of Justice in Peking to discuss the problems of prison reform. In the meantime the judicial authorities will report upon the gaols in their respective districts, to the Ministry. The Peking Model Gaol, which has already been completed, will be opened this year.

Two years ago a plan for reforming the prisons of the capitals and commercial ports of the provinces was drawn up. The number of prisons under this plan, including those already built, will be about sixty . . . These prisons should be completed by the end of the third year of the Republic . .

As regards the treatment of prisoners, they should not be herded together, but should be accommodated in separate cells. The cell system will be more expensive, but it and other reforms will be introduced gradually until the stage attained in Western Prison Administration is reached. In this way criminals will be benefited without unduly taxing China's financial resources.

Thus so far China has been attempting to prove that she is more than willing to perform her share of the requirements. However, to accomplish this is not the task of China alone but the work of the treaty powers as well. As Dr. Koo has well said:[11]

So long as the latter (the treaty powers), whatever tribute they may pay in words to China's growing desire to recover her jurisdiction over foreigners within her territory, remain tenacious in the maintenance of the principle of extraterritoriality, it is unlikely that China will be anxious to level down the barriers which now stand in treaties between the open ports and the interior or to remove the restrictions, which are now found in her laws, upon the freedom of the foreign merchant to share in the unprecedented opportunities for trading and investment throughout the country. Purely from the practical point of view it would seem inexpedient to permit alien commercial houses to be established broadcast in every part of the land when they are still invested with the immunities of extraterritoriality; for while missionaries in the interior, apart from their occasional demonstrations of exuberance of spirit in evangelical work, which have given birth to many anti-missionary riots, have, as a class, been little impeachable in their private conduct, it would be entirely a different case with foreign merchants, for in their train there are apt to be characters of all kinds and grades. The desired freedom and free development of commerce can be fully obtained only by China and the treaty powers working together. It seems that their interest being intrinsically common, each may justly be expceted to contribute her quota to secure their advancement. If China or any of the foreign states maintaining treaty relations with her is bent upon getting something for nothing, little can be done either for recovering territorial rights on one hand or for obtaining full commercial freedom on the other. Mutual forbearance and reciprocal concession are no less the best policy in the intercourse between nations than in the relations between individuals; and history has shown that few international questions of an important character have been peacefully settled without observing these apparently commonplace principles. In other words, intelligent cooperation alone can enable each to realize his legitimate object, whether jurisdiction or commerce.

If the signs of the time are read aright, such cooperation, however, seems to be forthcoming. Both China and the treaty powers have begun to realize that sound and smooth international relations between them, as between other states, must be built on sincere international goodwill, and their common delusions as to the inherent antagonism of Chinese and foreign interests are gradually giving way to a growing appreciation of the substantial identity of these interests. China, on one side, has in recent years opened

[11] Koo, V. K. W., *The Status of Aliens in China*, pp. 354–356.

up on her own initiative, a number of places to foreign trade and has already set herself to the task of improving her mercantile system to meet the needs of foreign commerce. Many of the treaty powers, on the other side, have come to appreciate the capabilities and potentialities of the Chinese people and have begun to see the futility, perhaps the folly, of entwining internanational politics with international commerce; they are beginning to direct their energies into the broad and straight channels of legitimate and pure commercial development. In short, between China and the treaty powers there seems to be rising a feeling of community of interest, and evidence is beginning to crystallize of their willingness to cooperate for the purpose of attaining their common object.

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